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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1973.

No. 73-434.

WILLIAM G. MILLIKEN, *et al.*,

Petitioners,

vs.

RONALD G. BRADLEY, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS AND ORDERS BELOW

The opinions of the Court of Appeals for the Sixth Circuit are reported at 484 F2d 215 and are reprinted in the Appendix to Petitions for Writ of Certiorari at pp 110a-240a. [1]

Other opinions delivered in the Courts below are:

United States District Court for the Eastern District of Michigan, Southern Division

September 27, 1971, Ruling on Issue of Segregation, 338 F Supp 582. (17a-39a).

November 5, 1971, Order [for submission of Detroit-only and metropolitan desegregation plans], not reported. (46a-47a).

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[1] Hereafter, references to appendices, records and exhibits will be enclosed in parentheses and indicated as follows:
Single joint appendix: (1al et seq.)
Appendix of constitutional and statutory provisions: (1aa et seq.)
Appendix to petitions for writ of certiorari: (1a et seq.)
Record of trial: (R 1 et seq.)
Record of proceedings before or after trial: (Date of proceeding).
Exhibits: Plaintiffs' (PX), defendant Detroit Board of Education's (DX), defendant-intervenor Detroit Federation of Teachers' (TX).

March 24, 1972, Ruling on Propriety of Considering a Metropolitan Remedy to Accomplish Desegregation of the Public Schools of the City of Detroit, not reported. (48a-52a).

March 28, 1972, Findings of Fact and Conclusions of Law on Detroit-Only Plans of Desegregation, not reported. (53a-58a).

June 14, 1972, Ruling on Desegregation Area and Order for Development of Plan, and Findings of Fact and Conclusions of Law in Support of Ruling on Desegregation Area and Development of Plan, 345 F Supp 914. (59a-105a).

July 11, 1972, Order for Acquisition of Transportation, not reported. (106a-107a).

September 6, 1973, Order [granting plaintiffs' motion to join all school districts in Wayne, Oakland and Macomb Counties, except the Pontiac school district], not reported. (1a 300-1a 301).

United States Court of Appeals for the Sixth Circuit

July 20, 1972, Order [granting leave to appeal], not reported. (108a-109a).

Other opinions of the Court of Appeals rendered at prior stages of the present proceedings are reported in 433 F2d 897, 438 F2d 945 and 468 F2d 902, *cert den*, 409 US 844 (1972).

JURISDICTION

The judgment of the Court of Appeals was entered on June 12, 1973. (241a, 244a-245a). The petition for certiorari was filed on September 6, 1973, and was granted on November 19, 1973. The jurisdiction of this Court rests on 28 USC 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution:

Amendments, Article V – "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the

land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendments, Article X – "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Amendments, Article XI – "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

Amendments, Article XIV, Section 1 – "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Due to the voluminous number of Michigan constitutional provisions and statutes cited in their brief, defendants, Milliken, et al, have compiled an appendix to their brief, pursuant to Rule 40.1(c), containing virtually all the Michigan constitutional and statutory provisions which are cited in their brief. This appendix, which is referred to herein as (1aa et seq.), has been separately bound since combining the brief and appendix in one volume would have resulted in too bulky a document for the reader. Where such appendix has the headings "article," "part," "chapter" or "public act," it does not necessarily mean that every provision of that unit appears in the appendix; only those provisions relevant to the brief are set forth, including the appropriate section numbers. The citations to the Michigan constitutional and statutory provisions are as follows:

Michigan Constitutions

Constitution of 1908, art 11, § 2

Constitution of 1963: art 4, § 33; art 5, §§ 19 and 31; art 8, §§ 2 and 3; art 9, §§ 6, 11 and 17; art 11, § 2.

Michigan Statutes

1955 PA 269, as amended, (the School Code of 1955); 1842 PA 70; 1969 PA 244; 1970 PA 48; 1964 PA 289; 1967 PA 239; 1937 PA 306, § 1; 1949 PA 231, § 1; 1962 PA 175, § 1; 1968 PA 239, § 1; 1957 PA 312, § 34; 1972 PA 258, §§ 18, 21 and 51; 1973 PA 101, §§ 21(1) and 51; 1947 PA 336, § 15, as added by 1965 PA 379; 1969 PA 306, § 46, as amended by 1971 PA 171.

When a statute is cited for the first time in this brief, parallel citations will be given.

The Michigan constitutional provisions and statutes contained in the appendix to this brief have been photocopied from the two official texts of Michigan laws: The Compiled Laws of 1970 and the Public Acts of the year specified for the law. The sole exception is 1973 PA 101, which has been copied from the advance sheets to the Michigan Statutes Annotated (MSA), since the official Public Acts of 1973 have not been published as of this time. The bold face captions to the constitutional and statutory provisions are not part of the law of Michigan, but have been supplied by the editors of the respective texts for easier reference by the reader.

QUESTIONS PRESENTED

I.

Whether, based upon the controlling precedents of this Court, petitioners, defendants Milliken, et al, have committed acts of de jure segregation with the purpose and present causal effect of separating school children by race either within the School District of the City of Detroit or between Detroit and other school districts in the 1,952 square mile tri-county area of Wayne, Oakland and Macomb?

II.

Whether the Detroit School District, a 63.8% black school district, could operate a unitary system under a Detroit-only desegregation plan, thus meeting the remedial requirements of the Constitution and the decisions of this Court?

III.

Absent any pleaded allegations, any proofs or any findings either that the boundaries of any of the 86 independent school districts within the 1,952 square mile tri-county area of Wayne, Oakland and Macomb have ever been established and maintained with the purpose and present causal effect of separating children by race, or that any such school districts, with the sole exception of Detroit, has ever committed any acts of de jure segregation, does the Constitution or any decision of this Court permit a multi-school district remedy?

STATEMENT OF THE CASE

In this case, the lower courts have used a ruling that the Detroit school system is de jure segregated as the basis for a remedy that involves 84 additional school districts in a geographical area covering approximately 1,952 square miles, and almost ½ of the public school children in the State.[2] The circumstances and proceedings by which this has come to pass are set forth hereafter.[3]

The separation of the races in the public schools of Michigan has been prohibited by Michigan law since at least 1869.[4]

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[2] Defendants Milliken, et al, realize that while no multi-district desegregation order is in effect at the present time, the District Court's Ruling on Desegregation Area and Order for Development of Desegregation Plan (97a) and the Court of Appeals affirmance thereof in principle (110a) make such a remedy inevitable unless this Court reaffirms the constitutional principles disregarded by the lower Courts in their zeal to achieve a racial balance among almost 1/2 of the public school children in the State.

[3] Petitioners Milliken, Kelley, State Board of Education, Porter and Green, collectively, will be called "defendants Milliken, et al." Individual references will be to that petitioner's name or office.

[4] *The People, ex rel Workman* v *Board of Education of Detroit*, 18 Mich 399 (1869).

I.

The Complaint

Plaintiffs commenced this class action by filing a complaint on August 18, 1970. (2a-16a). The complaint was not amended or supplemented until plaintiffs filed an "Amended Complaint to Conform to Evidence and Prayer for Relief" on or about September 4, 1973.[5] (Ia 291).

The allegations in plaintiffs' complaint were limited to claims of de jure segregation against the defendants solely within the School District of the City of Detroit. (11a-12a). Further, plaintiffs' prayer for relief was limited to the establishment of a unitary system of schools within the School District of the City of Detroit. (13a-15a). In addition, plaintiffs challenged the constitutionality of § 12 of 1970 PA 48 on the grounds that it interfered with the implementation of the Detroit Board of Education's April 7, 1970 plan involving alterations in attendance areas for 12 of the 21 Detroit high schools to increase racial balance in those 12 schools. (13a-15a).

The defendants named in the complaint were William G. Milliken, Governor of the State of Michigan and ex officio member (without vote) of the Michigan State Board of Education; Frank J. Kelley, Attorney General of the State of Michigan; Michigan State Board of Education, a constitutional body created by Mich Const 1963, art 8, § 3; John W. Porter, Superintendent of Public Instruction of the State of Michigan, ex officio chairman of the State Board of Education (without vote) and principal executive officer of the Michigan State Department of Education; Board of Education of the School District of the City of Detroit, a body corporate under the laws of the State of Michigan; the individual members of said Board of Education, and the Superintendent of Schools of said Board of Education. No school district (nor any officer or employee thereof) other than the School District of the City of Detroit was named as a defendant.

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[5] The majority opinion of the Court of Appeals suggested and authorized the amended complaint. (178a). Plaintiffs made no effort to amend their complaint prior to the Court of Appeals suggestion.

In their original complaint, plaintiffs made three basic claims: 1) that assignment of pupils within the Detroit public schools was based upon race; 2) that the assignment of personnel within the Detroit public schools to some extent was based upon race, and 3) that Section 12 of 1970 PA 48 was unconstitutional because it interfered with the implementation of the Detroit Board of Education's April 7, 1970 plan involving alterations in attendance areas for 12 of the 21 Detroit high schools to increase racial balance over a 3 year period in those 12 schools. (2a-13a). The relief sought was the temporary and permanent enjoining of the effect of Section 12 of 1970 PA 48 and the requiring that the April 7, 1970 plan be implemented in full in the 1970-71 school year, and requiring defendants to create and maintain a unitary, nonracial school system in the Detroit public schools. (13a-15a).

In their pretrial statement (Ia 75), plaintiffs advanced the following claims:

1. That the Detroit public schools were operated in a manner violating the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

2. That the Detroit school system operated racially identifiable "Negro" and "White" schools, which schools are inherently unequal and which deny plaintiffs equal educational opportunities.

3. That such a school system has an affirmative duty "to remove the racial identifiability of the schools in its system by desegregating the student body of the individual schools and by assigning and/or reassigning faculty members to each school in accordance with the system-wide ratio of black and white faculty members and by planning and making faculty additions in a manner which will promote and maintain racially non-identifiable schools."

Plaintiffs' claims in the joint pretrial statement (Ia 103-Ia 104) were identical.

In summary, plaintiffs alleged that the Detroit Board of Education operated a de jure segregated school system and they prayed as their relief that the Detroit public schools be compelled

to operate as a unitary school system. Further, plaintiffs' prayer for relief was directed entirely to relief in the Detroit school system and they made no claim for relief against any other school system.

II.

The Detroit Board of Education

Michigan school districts are organized and classified as primary, fourth class, third class, second class and first class, depending, essentially, upon the number of children between the ages of 5 and 20 within the district. The School Code of 1955, 1955 PA 269, as amended, §§2, 21, 53, 102, 142 and 182; MCLA 340.2, 340.21, 340.53, 340.102, 340.142 and 340.182; MSA 15.3002, 15.3021, 15.3102, 15.3142 and 15.3182. (6aa, 8aa, 20aa). Detroit is the only first class school district in the state. The other school districts involved here are third and fourth class school districts.

The City of Detroit was organized as one school district, as a body corporate by the name and style of "The board of education of the City of Detroit" in 1842,[6] and remains a single school district and a body corporate under the same name today. In other words, the Detroit Board of Education has existed as an independent body corporate governmental unit with its geographical boundaries coterminous with those of the City of Detroit since 1842.

The best way to capsulate the function and powers of the Detroit Board of Education, or any other school district in the state, is to say, in the words of the Michigan Supreme Court, that they are "local state agencies organized with plenary powers to carry out the delegated functions given it by the legislature." [7]

With regard to plaintiffs' claims that the Detroit public schools are a de jure segregated system, the plenary power to

[6] 1842 Laws of Michigan, No. 70, §§1 and 5. (55aa).

[7] *School District of the City of Lansing* v *State Board of Education*, 367 Mich 591, 595; 116 NW2d 866, 868 (1962).

locate school sites and construct school buildings, to condemn land therefor, to hire and assign teachers, and to establish attendance areas and assign students thereto has been delegated by the legislature to the Detroit Board of Education. See the School Code of 1955, *supra*, §§192 (condemnation) and 215 (buildings and sites), §§204, 269 and 569 (teacher hiring and assignment) and §589 (attendance areas and assignment of students). (32aa, 46aa, 49aa).

III.

The State Board of Education and the Superintendent of Public Instruction

The State Board of Education and the office of the Superintendent of Public Instruction were created anew by the Michigan Constitution of 1963 (Const 1963), art 8, §3. (3aa). In general, "[l]eadership and general supervision over all public education" is vested in the State Board of Education. Prior thereto the power of general supervision was vested in the Superintendent of Public Instruction. Const 1908, art 11, §2. (1aa). The present Superintendent of Public Instruction is appointed by the State Board of Education, is the chairman of the board without the right to vote and is responsible for the execution of its policies. Also, he is the principal executive officer of a state department of education. Const 1963, art 8, §3. (4aa).

The testimony of Dr. Porter demonstrates the fact that defendants Milliken, Kelley, the State Board of Education, and the Superintendent of Public Instruction, do not exercise supervisory authority over the Detroit Board of Education in the hiring or assignment of teachers, in the establishment of attendance areas, in the establishment of feeder patterns or in the transportation of children within the Detroit public schools. (IIIa 35 - IIIa 37).

IV.

Population – Detroit and the Detroit Board of Education

In 1940, the black population of the City of Detroit was 9.2% (of a total population of 1,623,452). (21a). By 1970, the

black population had risen to 43.9% (of a total population of 1,513,601). (21a). As the black population increased, it displaced the white population. (R367-369). As in the case of all large cities in the United States, blacks and whites in Detroit tend to live in separate areas of the city so that residential areas are either predominantly black or predominantly white. (R350-351).

In the school year 1960-61, the Detroit Board of Education enrolled 45.8% black pupils. (21a). By the school year 1970-71, the entrollment of black pupils in the schools was 63.8%. (21a).

In the school year 1960-61, the Detroit Board of Education operated 266 schools, eight of which had no white children in attendance, 73 of which had no black children in attendance, and the remainder had both white and black children in varying proportions. (22a). In 1970, the Detroit Board of Education operated 319 schools of which 30 had no white pupils in attendance and 11 had no black children in attendance, and the remainder had varying percentages of both black and white children. (22a).

V.

The Tri-County Area of Wayne, Oakland and Macomb Counties

According to the 1970 census, the population of Michigan is 8,875,083, almost half of which, 4,199,931, resides in the tri-county area of Wayne, Oakland and Macomb. Oakland and Macomb Counties abut Wayne County to the north and Oakland County abuts Macomb County to the west. These counties cover 1,952 square miles. [8] The population of Wayne, Oakland and Macomb counties is 2,666,751, 907,871 and 625,309, respectively. Detroit, the state's largest city, is located in Wayne County.

In the 1970-71 school year, there were 2,157,449 children enrolled in the school districts in Michigan. 13.4% of these children were black and 84.8% were white. There are 86 independent, legally distinct school districts within the tri-county area, having a

[8] Michigan Statistical Abstract, 1972 (9th ed.). This area is approximately the size of the state of Delaware (2,057 square miles), more than half again the size of the state of Rhode Island (1,214 square miles) and almost 30 times the size of the District of Columbia (67 square miles). Statistical Abstract of United States, 1972 (93rd ed.).

total enrollment of approximately 1,000,000 children, approximately 20% of whom are black. (66a).

VI.

Proceedings Through Trial

On September 3, 1970, Denise Magdowski, et al, were permitted to intervene as defendants, as parents and representatives of parents of children attending the Detroit public schools. On November 4, 1970, Detroit Federation of Teachers, Local 231, the collective bargaining representative of the Detroit Board of Education's teachers, was permitted to intervene as a party defendant. (Ia2).

Plaintiffs moved for interlocutory injunctive relief to, inter alia, require the Detroit Board of Education to put into effect its April 7, 1970 plan to increase racial balance in 12 high schools and to enjoin the implementation of 1970 PA 48 insofar as it might interfere with the effectuation of the April 7 plan. Defendants Milliken and Kelley moved for the dismissal of the suit as to them. On September 3, 1970, the District Court denied plaintiffs' request for interlocutory relief and dismissed the action as to defendants Milliken and Kelley. (Ia59, Ia62). In denying interlocutory relief, the District Court did not rule on the constitutionality of 1970 PA 48. (Id.)

Plaintiffs appealed to the Court of Appeals for the Sixth Circuit. The Court of Appeals declared 1970 PA 48, § 12 to be unconstitutional and ordered reinstatement of defendants Milliken and Kelley as parties, "at least at the present stage of the proceedings," but affirmed the denial of interlocutory relief. 433 F2d 897. Defendants Milliken, et al, did not seek a review of the decision of the Court of Appeals.

Upon remand to the District Court, plaintiffs moved for an order requiring the immediate implementation of the April 7, 1970 plan. In response to plaintiffs' motion, the District Court ordered the Detroit Board of Education to submit a high school attendance area plan to the Court consisting of that portion of the action taken by the Detroit Board of Education on April 7, 1970

with regard to changing the attendance areas of the 12 high schools, or an updated version thereof achieving "no less pupil integration." (Ia69). The Detroit Board of Education submitted two alternate plans known as "The Campbell Plan" and "The MacDonald Plan." In a ruling dated December 3, 1970, the Court ruled that the "The MacDonald Plan" was superior and ordered that it be implemented beginning September, 1971. (Ia88, Ia96).

Plaintiffs, claiming that the alternative plan was constitutionally insufficient, sought emergency relief in the Court of Appeals. Relief was denied and the Court of Appeals ordered the District Court to set a hearing on the merits forthwith. 438 F2d 945. Because the lower courts declined to order that it be done, the April 7 plan was never implemented.

Trial on the merits, limited to the issue of segregation *within* the Detroit public schools, began on April 6, 1971, and concluded on July 22, 1971, consuming 41 trial days. [9] Early in the trial, plaintiffs offered testimony as to housing discrimination within the City of Detroit (IIa9) and later in the trial with respect to areas in the counties of Wayne, Oakland and Macomb outside of the City of Detroit. (IIa69). When such testimony was first offered it was objected to by the defendants Milliken, et al, and by the Detroit Board of Education for the reason that such testimony involved the acts of other persons not parties to the suit. All testimony with regard to discrimination in housing was admitted over

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[9] From time to time during the course of the trial attempts were made by the plaintiffs and by the defendant-intervenor, Denise Magdowski, et al, to broaden the scope of the trial to affect, as to possible remedy, school districts not parties in this cause, located outside of the boundaries of the Detroit school system. From the remarks of the District Court, it is clear that he also understood what is patent in the pleadings, that the issue was whether the Detroit School District was a segregated system *qua* the Detroit public schools and not with respect to any other school district within the State of Michigan. Illustrative comments by the District Court follow:

> "Well, I don't know whether fortunately or unfortunately this lawsuit is limited to the City of Detroit and the school system, so that we're only concerned with the city itself and we are not talking about the metropolitan area." (IIa41).
>
> "I hope, Mr. Flannery, that is not a threat because I am having enough to do with my limited jurisdiction in this case, and I am not one for expanding it." (IIa44).

However, as the trial progressed, the perception of the District Court changed in pursuit of a multi-district remedy. (R3537, 4003, 4004; 20a)

the continuing objection of the defendants Milliken, et al, and the Detroit Board of Education. (IIa9-IIa10). There was no testimony regarding acts of housing discrimination on the part of defendants Milliken, et al, or of the Detroit Board of Education.

At the close of plaintiffs' case in chief, defendants Milliken, et al, moved to dismiss pursuant to FR Civ P 41(b). (Ia117-Ia118). The District Court took the motion under advisement and the defendants Milliken, et al, elected to rest on their motions to dismiss and did not participate further in the trial on the merits on the issues of whether the Detroit School District was a segregated school system.[10] (IIIa86-IIIa87). The District Court at a later date denied these motions. (242a).

On June 17, 1971, intervenors Denise Magdowski, et al, filed a motion to join as defendants all of the school districts in Wayne, Oakland and Macomb Counties. (Ia119-Ia129). The motion was heard on July 26, 1971 (R4682), and taken under advisement by the District Court. (R4709). The motion was never acted upon by the District Court and later the intervenor withdrew the motion.

On September 27, 1971, the District Court rendered its ruling on the issue of segregation in which it found that "both the *State of Michigan* and the Detroit Board of Education have committed acts which have been causal factors in the segregated condition of the public schools of the City of Detroit." (Emphasis added.) (33a). The de jure segregation found to exist was among the school buildings within the City of Detroit and not between the Detroit School District and any other school district in the State of Michigan. (17a-34a). The Court also found that "[t]he principal causes undeniably have been population movement and housing patterns, . . ." (33a).

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[10] The rationale for this position is found in *A & N Club* v *Great American Insurance Company*, 404 F2d 100, 103-104 (CA 6, 1968). If a defendant proceeds in the case after making a FR Civ P 41(b) motion, he waives his right to allege error on the motion's disposition only in light of the evidence introduced up to the point of the motion.

VII.

Proceedings After Trial

At a hearing on October 4, 1971, the Court orally ordered the Detroit Board of Education to submit its plan for desegregation of its schools within 60 days and ordered the defendants Milliken, et al, to submit "a metropolitan plan of desegregation" within 120 days. (43a). A written order to the same effect was entered on November 5, 1971. (46a-47a).

An appeal by defendants Milliken, et al, of the District Court's ruling on issue of segregation and the order of November 5, 1971 was dismissed for the stated reason that the ruling and order were not final. 468 F2d 902. Their petition for certiorari for a review of this dismissal was denied. 409 US 844.

As directed by the Court, plans for desegregation were filed by the parties, including plaintiff, on or before February 4, 1972. Between February 9 and 17, 1972, 43 school districts within the counties of Wayne, Oakland and Macomb filed motions to intervene for the purpose of representing their interests and those of the parents and children residing in the respective school districts. (Ia 185, Ia 190, Ia 193, Ia 196). Under date of March 6, 1972, the District Court notified all counsel that hearings on intra-city plans would begin at 10 a.m. on March 14, 1972; that recommendations for "conditions" of intervention be submitted not later than March 14, 1972; that briefs on propriety of metropolitan remedy by submitted not later than March 22, 1972, and that, tentatively, hearings on a metropolitan remedy would commence on March 28, 1972. (Ia 203). The hearings on the intra-district plans commenced on March 14, 1972. On March 15, 1972 the District Court allowed the 43 school districts to intervene, but imposed 8 conditions upon the intervention that severely limited their participation in the proceedings. (Ia 204-Ia 206). Among the conditions imposed were the following:

> "1. No intervenor will be permitted to assert any claim or defense previously adjudicated by the court.
>
> "2. No intervenor shall reopen any question or issue which has previously been decided by the court." (Ia 206).

Although the order allowing intervention stated that the intervention was allowed for two principle purposes: "(a) To advise the Court, by brief, of the legal propriety or impropriety of considering a metropolitan plan" and "(b) To review any plan or plans for the desegregation of the so-called larger Detroit Metropolitan Area . . . ", the Court's notice to counsel of March 6, 1972 directing that briefs on the propriety of the metropolitan remedy be submitted not latter than March 22, 1972, was not modified to provide any additional time for the intervenors to file their briefs or make their objections. The District Court filed its ruling that a metropolitan desegregation plan was appropriate on March 24, 1972. (48a).

Hearings on the intra-district plans commenced on March 14, 1972 and concluded on March 21, 1972. Plaintiffs' expert witness, Dr. Gordon Foster, testified as follows with regard to the intra-district plan that he prepared for plaintiffs (PX C2, R303, 304, 316):

"Q. I believe you testified you prepared an intra-district desegregation plan for the City of Richmond?

"A. That's correct.

"Q. Did the plan that you projected in your opinion meet the constitutional requirements of the Fourteenth Amendment?

***

"A. As I remember the situation, yes, I though that the plan met the requirements of what we then called a unitary school system.

"Q. Do you think that the plan that you prepared for the plaintiffs that is under consideration today, do you think that meets the constitutional requirements of the Fourteenth Amendment?

"A. I believe that it would in terms of at least the factor of pupil assignment which is what the plan is primarily about."

(IVa 95-IVa 96).

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"Q. Dr. Foster, in your opinion, your proposed plan to desegregate the Detroit School District is a sound educational plan, is that correct?

"A. Yes.

***

"Q. Yes, I am going to try to lead you in steps. Secondly, it would provide for equal treatment of children, would it not?

"A. I think so, yes. I perceive it as nondiscriminatory in that regard.

"Q. In your opinion this would improve the educational opportunity of Detroit of the children of Detroit?

"A. Yes."

(IVa 97-IVa 98).

In accordance with the March 6 notice and its ruling that a metropolitan desegregation plan was appropriate, the District Court commenced taking testimony on such plans on March 28, 1972. Later that day, the District Court filed its findings of fact and conclusions of law on Detroit-only plans of desegregation. (53a). In essence, the Court's ruling was that no Detroit-only plan would result in desegregation because of its majority black student body.

On June 14, 1962, the District Court filed its ruling on desegregation area and order for development of plan of desegregation (97a) and its finding of fact and conclusions of law in support of ruling on desegregation area and development of plan. (59a). The judicially decreed "desegregation area" included 53 school districts covering approximately 700 square miles within a three county area, involved 780,000 school children and required that at least 310,000 of them be transported. (72a). Although the District Court had expressly found no de jure segregation in the faculty in the Detroit public schools (23a-33a), the Order required faculty and staff reassignment among the 53 districts. (102a-103a).

The findings of fact and conclusions of law in support of the ruling contained the following initial finding:

> "It should be noted that the Court has taken no proofs with respect to the establishment of the boundaries of the 86 public school districts in the counties of Wayne, Oakland and Macomb, nor on the issue of whether, with the exclusion of the city of Detroit school district, such school districts have committed acts of de jure segregation." (59a-60a).

18 of the districts included in the "desegregation area" were not parties to the litigation when the ruling was made. (59a-60a).

The ruling on desegregation area also appointed a panel of 9 persons, later increased to 11, and charged it with the responsibility of preparing and submitting a desegregation plan in accordance with the provisions of the ruling. (99a).

On July 11, 1972, the District Court, following a recommendation of the panel, ordered the Detroit Board of Education to acquire 295 buses, the contracts for such acquisition to be entered into not later than July 13, 1972. (106a-107a). Defendants Milliken, et al, were ordered to bear the cost of the acquisition (106a) and by contemporaneous order, the Court on its own motion ordered Allison Green, Treasurer of the State of Michigan, to be made a party defendant. (Ia 263).

On July 20, 1972, the District Court, pursuant to oral motions made on July 19, 1972, certified to the Court of Appeals the issues presented by the five controlling orders or rulings made in the case to date. (Ia 265-Ia 266). Defendants Milliken, et al, and others, petitioned the Court of Appeals for permission to appeal the controlling orders, which permission was granted by the Court of Appeals. (108a). In said order, the Court of Appeals stayed the order for acquisition of transportation, July 11, 1972, and all proceedings with regard to the assignement of children and faculty within the desegregation area, except planning. (109a).

Permission to intervene was granted by the Court of Appeals to the Michigan Education Association on August 21, 1972, and to the Professional Personnel of Van Dyke on July 21, 1973.

A panel of the Court of Appeals filed its opinion on December 8, 1972. Thereafter, defendants moved for rehearing en banc, which was granted. Following rehearing, in a 6 to 3 decision, the Court of Appeals (en banc) in substance affirmed the District Court's orders and rulings. (189a-190a).

On August 6, 1973, plaintiffs filed a motion in the District Court for the joinder of all of the school districts in the counties of Wayne, Oakland and Macomb that had not already been made parties herein, with the exception of the Pontiac School District which is under a U.S. District Court desegregation order in another proceeding. (Ia 287).

On September 6, 1973, the District Court ordered the joinder of all of the school districts in Wayne, Oakland and Macomb Counties that were not parties to the suit, except the Pontiac School District. (Ia 300).

On or about September 4, 1973, plaintiffs filed an amended complaint to conform to evidence and prayer for relief. (Ia 291-Ia 299). The thrust of this complaint, as contrasted with the original complaint, is that the Detroit School System is a de jure segregated system not only within the Detroit public schools but as between the Detroit public schools and other school districts in the counties of Wayne, Oakland and Macomb. Plaintiffs are pleading a new cause of action for a multi-district remedy but do not allege that school district boundaries have been created or altered for segregatory purposes nor do they allege that any of the school districts other than Detroit have committed acts of de jure segregation. (Ia 294).

Although not stated in so many words in the amended complaint, from the listing of the school districts in paragraphs 15 and 16 thereof it is apparent that plaintiffs are seeking substantially the same relief as was ordered by the Court in its ruling on desegregation area and order for development of plan.

SUMMARY OF ARGUMENT

I. Defendants Milliken, et al, have not committed acts of de jure segregation with the purpose and present causal effect of separating school children by race either within the Detroit

school district or between Detroit and the other 85 school districts in the tri-county area. *Keyes* v *School District No. 1, Denver, Colorado,* _____ US _____; 93 S Ct 2686, 2697-2699; 37 L Ed 2d 548, 562-566 (1973).

A. The rulings against the defendants Milliken, et al, are based, not upon their actual conduct in office, but upon the judicial goal of achieving racial balance throughout a large, densely populated area convering three counties. (41a, 224a)

B. It is the Detroit Board of Education, pursuant to Michigan law, and not any of the defendants Milliken, et al, herein, that selects and acquires school sites, constructs schools, establishes attendance areas and transports and assigns pupils to the public schools under its operational control.

C. The State of Michigan is not a party in this cause. Defendants Milliken, et al, are not vicariously liable for the alleged de jure conduct of defendant Detroit Board of Education. US Const, Am XI. *Sterling* v *Constantin,* 287 US 378; 53 S Ct 190; 77 L Ed 375 (1932). *In re State of New York,* 256 US 490; 41 S Ct 588; 65 L Ed 1057 (1921). The shifting burden of proof principle set forth in *Keyes, supra,* 93 S Ct, at 2697, 2698, is carefully limited to situations involving the same defendant against whom a finding of de jure segregation is made as to a substantial portion of the school district in question.

D. The Carver School District has been a part of the Oak Park School District since 1960, thus, manifestly negating any present segregatory effect. (169a) *Keyes, supra,* 93 S Ct, at 2698, 2699.

E. Alleged inter-district disparities in financial resources, among school districts, including funds for intra-district transportation, give rise to no constitutional violation. *San Antonio Independent School District* v *Rodriguez,* 411 US 1; 93 S Ct 1278; 36 L Ed 2d 16 (1973).

F. From and after October 13, 1970, the lack of implementation of the April 7, 1970 racial balance plan affecting some of the students in 12 of 21 Detroit high schools has been the result of the unwillingness of the Detroit Board of Education and the lower courts herein to implement such plan.

G. There can be no multi-school district school construction violation by defendants Milliken, et al, for the reason, inter alia, that in each affected school district herein, it is the local board of education that selects and acquires school sites and constructs schools under Michigan law, and the trial court expressly stated that it took no proofs as to whether any school district, other than Detroit, has committed any acts of de jure segregation. (59a-60a)

II. A dual school system within a school district must be dismantled and converted into a unitary school system within the school district, so that no pupil is excluded from any school, directly or indirectly, because of race. *Green* v *School Board of New Kent County*, 391 US 430; 88 S Ct 1689; 20 L Ed 2d 716 (1968). *Alexander* v *Holmes County Board of Education*, 396 US 19; 90 S Ct 29; 24 L Ed 2d 19 (1969). *Swann* v *Charlotte-Mecklenburg Board of Education*, 402 US 1; 91 S Ct 1267; 28 L Ed 2d 554 (1971).

A. The Detroit School District is not a racially imbalanced system because of any purposeful action to segregate by defendants Milliken, et al, or the defendant Detroit Board of Education. Racial imbalance in the Detroit school system was caused by housing patterns. The Constitution imposes no duty upon school officials to overcome racially imbalanced housing patterns by racially balancing the schools. *Spencer* v *Kugler*, 326 F Supp 1235 (D NJ, 1971), aff'd on appeal, 404 US 1027; 92 S Ct 707; 30 L Ed 2d 723 (1972).

B. The racial composition of the pupils of the Detroit School District is 63.8% black children and 34.8% white children. (21a).

C. Assuming, arguendo, that the Detroit School District is a dual school system, plaintiffs' Detroit-Only plan to dismantle such dual system would establish a unitary system as required by *Green, supra*, 391 US, at 442; *Alexander, supra*, 396 US, at 20, and *Swann, supra*, 402 US, at 23. Plaintiffs' Detroit-Only plan would eliminate racially identifiable schools, no child would be excluded from any school, directly or indirectly because of race or color, and the plan is educationally sound, as testified to by Plaintiffs' expert witness. (IVa95-98).

D. Plaintiffs' Detroit-Only plan, even though it would accomplish more desegregation than now obtains in the school district, was disapproved by the District Court only because it did not lend itself as a building block for a multi-district plan spanning a tri-county area, and would make the Detroit school system more identifiably black. This action of the Court was error. *Green, supra*, 391 US, at 442; *Alexander, supra*, 396 US, at 20; and *Swann, supra*, 402 US, at 23.

E. The erroneous decision of the District Court, affirmed by the majority of the Court of Appeals, is predicated upon an unwarranted overriding emphasis on the future black pupil population of the Detroit School District in 1975, 1980 and 1992, based entirely upon conjecture, so as to justify the exercise of judicial power to attain the social goal of racially balancing the public schools within a 1,952 square mile geographical area.

F. The majority of the Court of Appeals affirmed the decision rejecting plaintiffs' Detroit-Only plan on the erroneous premise that anything less than a multi-district plan encompassing a vast geographical area over three counties would result in the Detroit School District being an all black school district surrounded by all white school districts.

G. The decisions of this Court command the dismantling of dual school systems now in majority black school systems and the establishment of unitary systems within such districts. Unitary systems have been established

within a 66% black, 34% white school district in *Wright* v *Council of City of Emporia*, 407 US 451; 92 S Ct 2196; 33 L Ed 2d 51 (1972); within a 77% black, 22% white and 1% American Indian school district in *Cotton* v *Scotland Neck City Board of Education*, 407 US 484; 92 S Ct 2214; 33 L Ed 2d 75 (1972); within a 60% black school district in *Raney* v *Board of Education of the Gould School District*, 391 US 443; 88 S Ct 1697; 20 L Ed 2d 727 (1968); and within a 64% black, 36% white school district in *Bradley* v *School Board of Richmond, Virginia*, 462 F2d 1058 (CA 4, 1972), aff'd by equally divided Court in ___ US ___; 94 S Ct 31; 38 L Ed 2d 132 (1973). A unitary system is capable of being established within a 57% black, 43% white school district in *Northcross* v *Board of Education*, 420 F2d 546 (CA 6, 1969), aff'd in part and remanded in 397 US 232; 90 S Ct 891; 25 L Ed 2d 246 (1970).

H. A unitary school system having a racial composition of 63.8% black children and 34.8% white children is not unconstitutional.

III. The lower courts committed manifest error in decreeing a multi-school district remedy.

A. Federal judicial power may not be substituted for the legitimate authority of state and local governments in public education except on the basis of an unconstitutional violation. *Swann, supra*, 402 US, at 16.

B. Here, there is no unconstitutional violation to serve as a predicate for judicially imposed multi-district relief. The record is barren of allegations, proofs and findings either that school district boundaries were manipulated for unlawful segregatory ends or that any school district, other than Detroit, committed any acts of de jure segregation. (59a-60a) *Bradley* v *Richmond, supra*, 462 F 2d, at 1060. Further, there is no causal nexus between any alleged conduct of the defendants Milliken, et al, and the distribution of pupils by race between Detroit and the other 85 school districts in the tri-county area.

Keyes, supra, 93 S Ct, at 2698-2699.

C. The Constitution does not require racial balance among school districts over a three county area. *Swann, supra*, 402 US, at 24. *Emporia, supra*, 407 US, at 464, 473. Further, the historical, rational and racially neutral coterminous boundaries of the city and school district of Detroit do not constitute a constitutional violation. *Spencer* v *Kugler, supra*, 326 F Supp, at 1240, 1243. In addition, there has been no showing in this cause "that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools,". *Swann, supra*, 402 US, at 32.

D. The traumatic governmental restructuring of scores of legally, geographically and politically independent school districts, implicit in the multi-district relief approved by the lower courts, (104a-105a, 188a-189a) is directly contrary to the result reached in *Bradley* v *Richmond, supra*.

E. The affected school districts are legally, politically and geographically separate, identifiable and unrelated units that facilitate local control and participation in public education through locally elected boards of education. Thus, based on its past precedents, this Court should respect the integrity of these local political subdivisions. *Keyes, supra*, 93 S Ct, at 2695; *Emporia, supra*, 407 US, at 469 and 478; *Rodriguez, supra*, 411 US, at 49-50, 54.

F. The multi-million dollar transportation costs involved in multi-school district relief are excessive and will impose an additional burden on educational resources.

G. The school districts to be affected herein, other than Detroit, were denied due process by the lower courts. (See dissenting opinions of Judge Weick, 205a-212a; Judge Kent, 230a-238a; and Judge Miller, 239a-240a).

ARGUMENT

I.

THE RULING OF THE COURT OF APPEALS AFFIRMING THE DISTRICT COURT'S HOLDING THAT DEFENDANTS MILLIKEN, ET AL, HAVE COMMITTED ACTS RESULTING IN DE JURE SEGREGATION OF PUPILS, BOTH WITHIN THE SCHOOL DISTRICT OF THE CITY OF DETROIT AND BETWEEN DETROIT AND OTHER SCHOOL DISTRICTS IN A TRI-COUNTY AREA, IS WITHOUT BASIS IN FACT OR LAW.

The decisions of the lower courts herein represent, not a faithful adherence to the Constitution and the binding precedents of this Court, but rather an attempt to use the law as a lever in attaining what the lower courts decided is the desirable social goal of multi-school district racial balance throughout a vast three county area. This is vividly demonstrated by the trial court's statement in a subsequent remedy pre-trial conference, "[i]n reality, our courts are called upon, in these school cases, to attain a social goal, through the educational system, by using law as a lever." (41a)

The sound dissent of the late Circuit Judge Kent sets forth the overriding concern of the appellate majority for racial balance among school districts as follows:

> "Through the majority's opinion runs the thread which holds it together. That thread is the unwillingness apparent in the minds of the majority to sanction a black school district within a city which it concludes will be surrounded by white suburbs. While the majority does not now state that such a demographic pattern is inherently unconstitutional, nevertheless, I am persuaded that those who subscribe to the majority opinion are convinced, as stated in the slip opinion of the original panel, 'big city school systems for blacks surrounded by suburban school systems for whites cannot represent equal protection of law.' While that statement has been removed from the opinion of the majority, yet the premise upon which the statement was obviously based must necessarily form the foundation for the conclusions reached in the majority opinion. It may be that such will become the law,

but such a conclusion should not recieve our approval on a record such as exists in this case." (224a)

Thus, the underlying premise of both lower courts is the achievement of what they perceived as the desirable social goal of racial balance among school districts, rather than the vindication of constitutional rights to attend a school free from racial discrimination by public school authorities. *Brown* v *Board of Education*, 347 US 483; 74 S Ct 686; 98 L Ed 873 (1954). Viewed against this background, the defendants Milliken, et al, submit that the rulings that they had committed acts resulting in de jure segregation are mere makeweights designed to provide the legal window dressing for the achievement of multi-school district racial balance.

The constitutional violations allegedly committed by the defendants Milliken, et al, are set forth under the caption of "State of Michigan." (151a-152a) The majority opinion of the Court of Appeals elsewhere acknowledges that the State of Michigan is not a party to this cause. Thus, these rulings are directed against the defendants Milliken, et al. (115a). The following review of these rulings will conclusively demonstrate that the courts below, as to the defendants Milliken, et al, have erected an edifice of unconstitutionality upon a foundation of sand in attempting to further their paramount goal of multi-school district racial balance.

A. Ruling (5) – transportation of Carver School District's high school students.

Ruling (5) relates to the transportation, by the Detroit Board of Education, of high school students from the Carver School District, which did not have a high school, to Northern High School within Detroit during the 1950's. (152a, 137a-138a). Here, it must be observed that under Michigan law no school district has any legal duty to educate non-resident pupils on a tuition basis. *Jones* v *Grand Ledge Public Schools*, 349 Mich 1; 84 NW 2d 327 (1957). However, the Carver area was adjacent to Detroit and the Detroit school district voluntarily chose to accept these non-resident pupils (Va 14). The reason that the student were bussed past Mumford to Northern was that "Mumford was must more crowded." (Va 186).

The majority opinion states that such transportation "could not have taken place without the *approval, tacit or express,* of the State Board of Education." (Emphasis added) (152a) The trial court's ruling on this point contains no reference to the State Board of Education. (96a). The record is barren of any proof that the State Board of Education possessed *any* actual knowledge of the transportation in question, let alone approving same. To the contrary, the record is clear that when the then Superintendent of the Detroit Schools "became aware of it" such transportation of Carver students was discontinued. (Va 186). Since not even the Superintendent of Schools in Detroit was initially aware of this bus route affecting his own shcool district, what possible basis can there be for imputing knowledge of this bus route or the racial compositions of Mumford and Northern high schools to the State Board of Education in Lansing, Michigan? The Michigan Department of Education never collected any racial counts of pupils until after April, 1966. (See next to last paragraph at PX 174, Va 13). The reference to the State Board of Education by the Court of Appeals majority is without any evidentiary support. The requirement of a finding of segregative purpose enunciated in *Keyes, supra,* 93 S Ct, at 2697, cannot be met as to ruling (5) for the reason that purpose presupposes knowledge of the event in question, an element which is totally lacking in this cause as to defendant State Board of Education.

In 1960, the Carver School District, an independent school district, became disorganized and lost its identity and became a part of the Oak Park School District by attachment of the County Board of Education, pursuant to Section 3 of 1955 PA 269, as amended, being MCLA 340.1 et seq; MSA 15.3001 et seq; hereinafter referred to as the School Code of 1955. (169a, 6aa). The Oak Park school district has a 10.1% black student body and, according to plaintiffs' expert witness, the black students currently residing in the former Carver area attending Oak Park schools are thriving academically. (PX P.M. 12, Va 113, R 939-R 940, R 996-R 997). Further, in the 1969-70 school fiscal year, Oak Park had the highest per pupil expenditures of any Michigan school district. Bulletin 1012, Michigan Department of Education, December, 1970, pp 26-27.

This Court has adopted the sound rule that to establish a constitutional violation, there must be a causal relationship between the act complained of and a present condition of segregation. *Keyes, supra,* 93 S Ct, at 2698, 2699. Obviously, the reliance of the majority herein on the transportation of Carver students, not parties to this action, prior to 1960 to a Detroit high school fails to meet this controlling test of present causal nexus in light of the developments since 1960 involving the attachment of Carver to Oak Park, the attendance of students residing in the former Carver area in the largely white Oak Park school district and their good academic performance as testified to by plaintiffs' expert witness.

B. Ruling (4) – allocation of transportation funds

The District Court's Ruling on Issue of Segregation in Detroit contained the following language which was quoted in the majority opinion of the Court of Appeals.

> " '. . . The *State* refused, until this session of the legislature, to provide authorization or funds for the transportation of pupils within Detroit regardless of their poverty or distance from the school to which they were assigned, while providing in many neighboring, mostly white, suburban districts the full range of state supported transportation. This and other financial limitations, such as those on bonding and the working of the state aid formula whereby suburban districts were able to make far larger per pupil expenditures despite less tax effort, have created and perpetuated *systematic educational inequalities*.' " (Emphasis added.) (152a).

This language, which constitutes a major part of the District Court's holding against the defendants Milliken, et al, on the initial question of de jure segregation in Detroit goes, not to the question of pupil assignment in Detroit, but to the markedly different question of inter-district disparities in school finance.

Here, it is instructive to note that the trial court made no conclusions of discriminatory allocation of funds between predominantly black and predominantly white schools within Detroit although plaintiffs presented evidence directed at the point and submitted proposed Findings of Fact on the issue which were not

adopted by the trial court. The use of alleged inter-district disparities in school resources as a predicate for finding de jure segregation as to only black students within Detroit, can only be explained by the trial court's preoccupation with using law as a lever to obtain the judicially desired goal of multi-school district racial balance.

Although quoting the trial court in full as to finance, the appellate majority apparently adopted as its own ruling only the district court language dealing with transportation funds. (151a, 152a). This reluctance to expressly embrace the state school aid formula and bonding portions of the trial court's finance language is readily understandable since such findings are contrary to the facts in this cause as demonstrated below:

A. In 1969-70, the last school fiscal year for which data was available prior to trial herein, of the 84 school districts operating high schools in the tri-county area (Wayne, Oakland and Macomb counties), only 33 had a greater revenue producing ability than Detroit in terms of state equalized valuation of taxable property per pupil within their boundaries. Bulletin 1012, Michigan Department of Education, December, 1970, pp 20-23, 26-27, 32-35.

B. In 1969-70, 76 of the 84 school districts in the tri-county area made a greater tax effort than Detroit in terms of operating tax rates. Bulletin 1012, Michigan Department of Education, December, 1970, pp 20-23, 26-27, 32-35.

C. In 1969-70, only 38 of the 84 school districts in the tri-county area had higher general fund expenditures per pupil than Detroit. Bulletin 1012, Michigan Department of Education, December, 1970, pp 20-23, 26-27, 32-35.

D. In 1969-70, only 13 of the 84 school districts in the tri-county area had higher average teacher salaries than Detroit. Bulletin 1012, Michigan Department of Education, December, 1970, pp 20-23, 26-27, 32-35.

Thus, when compared to the other 83 school districts operating high schools in the tri-county area, Detroit was above average in state equalized valuation per pupil and general fund expenditures per pupil while it was way below average in terms of tax effort, as measured by operating tax rates, and way above average in terms of average teacher salaries. Further, it should be noted that for 1969-70, Detroit paid its teachers with a B.A. degree the average of the top 10 salaries of the school districts in Wayne, Oakland and Macomb counties, and paid its teachers with an M.A. degree the average of the top 12 salaries of the school districts in Wayne, Oakland and Macomb counties. (Detroit Teachers Contract, Va 1, Va 2). Consequently, it must be concluded that, contrary to the trial court's finding, (152a), very few suburban districts made "less tax effort" than Detroit and Detroit's general fund expenditures per pupil were higher than a substantial number of school districts making a greater tax effort.

Turning to the bonding portion of the District Court's finance language, it is instructive to observe that in the slip opinion of the original panel of the Sixth Circuit, December 8, 1972, pp 41, 47-49, the Court expressly adopted the trial court's finding on bonding, only to drop same from the majority opinion on rehearing in terms of the five numbered rulings against the defendants Milliken, et al. (151a-152a). This is understandable in light of the fact that, as was pointed out on rehearing, Detroit's current bonding authority had not yet been exhausted when it was increased to 5% of the state equalized valuation of taxable property within the district without a vote of the people, thus bringing it in harmony with other classes of school districts. (See pp 48-49 of the December 8, 1972 slip opinion of the Sixth Circuit.) Prior to 1968 the bonding authority of third, second and first class school districts was limited to 2% without a vote of the people. See, respectively, Sections 115, 158 and 220a of the School Code of 1955, as amended, *supra*. (25aa, 31aa, 33aa). This limitation was raised to 3% in first class school districts (Detroit), and 5% in all other districts by 1968 PA 316 and increased to 5% in first class districts by 1971 PA 23, prior to Detroit having exhausted its pre-existing authority to bond without a vote of the people for school construction. (17aa-18aa, 25aa-26aa, 31aa, 33aa-34aa). Thus, any claim of bonding discrimination must fall as it did in the Court of

Appeals majority opinion on rehearing. Compare pp 41, 47-49 of the opinion of December 8, 1972 and (151a-157a) of the opinion issued June 12, 1973.

In addition, the question of inter-district disparities in school finance has been definitively adjudicated by this Court in *San Antonio Independent School District* v *Rodriguez, supra,* and the conclusion is compelled that both lower courts erred, as a matter of law, in relying on alleged inter-district financial disparities. The financial disparities among school districts in Michigan, as in Texas, are the result of local variations in both taxable property per pupil and school tax rates that are not violative of the Equal Protection Clause under the applicable rational basis test. *Rodriguez, supra.* See also, Mich Const 1963, art 9, § 6 and § 11 for the constitutional outline of Michigan's system of school finance. [11] (4aa, 5aa).

The trial court's ruling as to state aid transportation funding, which was independently adopted and set forth on appeal, warrants scrutiny. (151a). This urban rural statutory distinction was recently found to be both reasonable and non-racial by another Federal Districtt Court in Michigan, as follows:

> "There was proof that rural school districts received up to 75% reimbursement for student transportation expense where none was, until recently, received by the Grand Rapids Board or other districts for students residing within the city limits. While plaintiffs do not press any claim that the law is unconstitutional, they urge that the fact of the distinction is discriminatory as part of overall state action claimed violative of plaintiffs' rights. It is an urban-rural classification distinction based upon known differences usually characteristic of urban and rural areas: absence of public transportation, sidewalks, lesser density of student population and generally longer distances. It is in no part related to racial difference.

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[11] In Michigan's most recent legislation dealing with state aid to school districts, the legislature has adopted a power equalizing formula to be phased in over a three year period, pursuant to which each school district will be guaranteed $40.00 per pupil for each mill of operating tax effort, thus making expenditures per pupil primarily a function of the willingness of the voters in each school district to tax themselves for school purposes. See Section 21(1) of 1972 PA 258, as amended by 1973 PA 101, MCLA 388.1121; MSA 15.1919 (521). (74aa).

"The exercise of legislative discretion in this regard is as valid as is that which sees the Grand Rapids School District receive annually over $1,000,000 in compensatory aid money under Section 3 of the State Aid Act, funds in which the suburban school districts do not participate at all. The overall record heavily supports the claim that no financial discrimination has been practiced against plaintiffs and their class in the operation of the school system at any level. . . ."

Higgins v *Board of Education of the City of Grand Rapids, Michigan*, (WD, Mich, CA 6386), Slip Opinion of Judge Albert J. Engel, July 18, 1973, pp 77-78.[12]

In the 1969-70 school fiscal year, Detroit received $1,729,755.00 in Section 3 compensatory state aid money. See Section 3 of 1957 PA 312, as amended by 1969 PA 22. However, only 9 of the other school districts in the tri-county area received any Section 3 funds in 1969-70. A Description and Evaluation of Section 3 Programs in Michigan 1969-70, Michigan Department of Education, March 1, 1970, Appendix B, pp 61-63.

Further, applying the correct reasonable basis test ennunciated in *Rodriguez, supra*, a three judge federal court held this very type of urban-rural classification for purposes of state school aid transportation funding "plainly constitutional." *Sparrow* v *Gill*, 304 F Supp 86, 90-91 (MD NC 1969). As recognized in the opinion of Mr. Justice Powell in *Keyes, supra*, 93 S Ct, at 2714, the need for pupil transportation is obviously greater in rural than in urban areas.

In *Keyes, supra*, 93 S Ct, at 2697, this Court emphasized that the difference between de jure and de facto segregation is a finding

[12] In *Higgins, supra*, plaintiffs sought a multi-district desegregation remedy involving Grand Rapids, which has only a 25% black student body, and 11 other surrounding school districts. In a 105 page opinion, following a 27 day trial in which all 12 school districts and the same defendants Milliken, et al, involved herein fully participated, the District Court ruled that, with the sole exception of faculty assignment within Grand Rapids, ". . . the proofs have failed to establish the other allegations in plaintiffs' complaint, as amended, as to the Grand Rapids Board of Education or as to any other defendants in the case." Slip opinion, p 103. Thus, in *Higgins, supra*, plaintiffs' claims of de jure conduct against the defendants Milliken, et al, not unlike those made herein, were found wholly lacking in merit.

of purposeful intent to segregate. In the instant cause, neither lower court made any finding of purposeful segregation in connection with the statutory urban-rural classification employed by the legislature for allocating categorical state school aid transportation funds to school districts. As noted by the trial court, this classification also applied to other "city-contained school districts, . . . in the desegregation area. . . ." (93a). Clearly, this legislatively imposed urban-rural geographical classification is not based on race but on whether children reside within or without incorporated cities, irrespective of race. [13]

Moreover, in *Keyes, supra*, 93 S Ct, at 2698, 2699, this Court held that another finding essential in determining de jure segregation is that the acts in question must have a present causal effect of segregation. In this regard, the District Court's finding on transportation reimbursement made no reference to any finding of segregative effect within Detroit. (27a). The Court of Appeals' majority opinion erroneously conveys the impression that the trial court made a finding that the lack of state aid transportation reimbursement "contributed to pupil segregation." (154a).

However, the trial court made no such finding in its Ruling on Issue of Segregation as, indeed, it logically could not in light of its de jure findings concerning the conduct of the Detroit Board of Education in transporting children to relieve overcrowding. (25a). The Court of Appeals' majority opinion is manifestly inconsistent in its dual ruling that, while Detroit transported children in a manner furthering segregation, the lack of categorical state school aid transportation reimbursement funds in Detroit also contributed to pupil segregation in some inexplicable way.

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[13] While it is true that the categorical appropriation for transportation reimbursement contains an urban-rural classification, it must be stressed that Detroit, like all other school districts, may use its locally collected property tax revenues for transportation purposes. (IIIa 32). Further, contrary to the erroneous statement of the appellate majority that "Detroit was denied any allocation of State funds for pupil transportation," (151a), the Detroit Board of Education could, in its discretion, spend its general state school aid per pupil membership allowance funds, which comprise the great bulk of state school aid, for transportation purposes. See Section 34 of 1957 PA 312 and, for the current legislation, see Section 18(1) of 1972 PA 258, MCLA 388.1118; MSA 15.1919(518). (72aa, 73aa)

Finally, as to ruling (4), neither lower court made any finding that the urban-rural statutory classification employed for state school aid categorical transportation reimbursement to school districts to transport their own pupils had any causal effect on the distribution of pupils by race as between Detroit and the other 85 school districts in Wayne, Oakland and Macomb counties. Thus, in light of *Keyes, supra*, 93 S Ct, at 2698, 2699, this statutory classification provides no basis for the imposition of a multi-district remedy herein.

In summary, both as a matter of fact and law, the lower courts committed manifest error concerning matters of alleged inter-district disparities in school finance, including categorical state school aid transportation reimbursement as determined by the legislature. When carefully examined, these determinations by the lower courts only support the conclusion that, given the judicially desired goal of multi-school district racial balance, the facts were disregarded and the law ignored to reach such goal.

C. Ruling (3) – school construction

Ruling (3) relates to the matter of school construction. This ruling is premised on the alleged statutory control of defendant State Board of Education over site acquisition by local school boards for new school construction. (151a, 157a). This ruling of de jure segregation must be carefully examined in light of Michigan's statutory provisions relating to site acquisition and school construction.

Under Michigan law, defendant Detroit Board of Education, like other boards of education in Michigan, is empowered with plenary discretionary authority to locate and acquire school sites. See sections 77, 113, 165, 220a of the School Code of 1955, MCLA 340.77, 340.113, 340.165, 340.220a; MSA 15.3077, 15.3113, 15.3165, 15.3220a. (17aa, 23aa-24aa, 32aa, 33aa-34aa). This statutory authority includes the power to acquire school sites by exercise of the power of eminent domain that is not subject to review by any of the defendants Milliken, et al, herein. See section 192 of the School Code of 1955, *supra*, relating specifically to Detroit as a first class school district and sections 711 through 724 of the same statute laying out the condemnation procedure for

school districts generally. (32aa, 51aa). See also *Board of Education of the City of Detroit* v *Lacroix*, 239 Mich 46; 214 NW 239 (1927). *Cleaver* v *Board of Education of City of Detroit*, 263 Mich 301; 248 NW 629 (1933). *Blissfield Community Schools District* v *Strech*, 346 Mich 186; 77 NW 2d 785 (1956).

The basic Michigan statute dealing with the construction of school buildings is 1937 PA 306, as amended, MCLA 388.851 *et seq.*; MSA 15.1961 *et seq*. In 1949, by Act 231, the legislature amended section 1 of this act to provide, for the first time, that in the approval of construction plans by the Superintendent of Public Instruction, not the State Board of Education, he was to consider, as one of several factors, "[t]he adequacy and location of the site." In 1962, by act 175, the legislature amended section 1 of this statute again, thereby removing any power on the part of the Superintendent of Public Instruction to consider site location as a factor in approving school construction plans. This statute, since 1962 and presently, deals only with approval of school construction plans in terms of fire, health and safety requirements. (68aa-72aa).

Thus, under Michigan law, the legal authority of defendant Superintendent of Public Instruction in site selection was, prior to 1949 and after 1962, nonexistent. During the intervening period, this limited role related, not to the time at which the site was acquired by the local board of education but, to a subsequent point in time relating to the submission of construction plans for approval as to health, fire and safety, at which point he could consider, as one of several factors, the adequacy and location of the site. At no time was the Superintendent of Public Instruction empowered to compel any local school board to acquire a particular site for school purposes or to review its exercise of the power of eminent domain. Further, it is the Detroit Board of Education, acting alone, that establishes the attendance areas for each school under its jurisdiction. *Hiers* v *Detroit Superintendent of Schools*, 376 Mich 225, 235; 136 NW 2d 10, 15 (1965). (IIIa 36).

Moreover, it was the testimony of Mr. Henrickson, an administrative employee of the Detroit Board of Education who testified at length during the trial and was selected as a member of the judi-

cially appointed desegregation panel, (99a), that within the time period from 1949 to 1962, the site standards adopted and utilized by Detroit for school site selection and acquisition were developed locally and were not directed by either the State Department of Education or the State Superintendent of Public Instruction under Mich Const 1908, art11, § 2. (IIIa87-IIIa88) (1aa). Further, it was not until after the issuance of the Joint Policy Statement in 1966 that the Michigan Department of Education began to collect pupil data by race from school districts. (See next to last paragraph of PX 174, Va13). Thus, during the period from 1949 to 1962 there is simply no basis for the claim that the Superintendent of Public Instruction, through the Michigan Department of Education, committed purposeful acts of de jure segregation with respect to school site selection in Detroit by the Detroit Board of Education. *Keyes, supra*, 93 S Ct, at 2697.

Virtually all the construction relied upon by the lower courts in finding de jure segregation in Detroit occurred after 1962. (144a-151a). Clearly, a failure on the part of the Superintendent of Public Instruction to exercise a nonexistent power under state law cannot constitute purposeful de jure segregation as required by *Keyes, supra*, 93 S Ct, at 2697. This portion of the Court of Appeals' majority opinion is in direct conflict with the en banc opinion of the Fourth Circuit in *Smith* v *North Carolina State Board of Education*, 444 F2d 6 (CA 4, 1971), vacating portions of the District Court's order directed at the state defendants therein for the reason that, under state law, such defendants lacked any lawful authority to prescribe school attendance plans for local school districts. As the North Carolina State Board of Education lacked authority, under state law, to prescribe school attendance plans for local school districts, so here the Michigan Superintendent of Public Instruction lacked any authority under Michigan law, to control the school site selections of defendant Detroit Board of Education.

An interesting example of the efforts undertaken herein to achieve racial balance, pure and simple, is the trial court's reference to the "statements" and "guidelines" relative to site location contained in the Joint Policy Statement and School Plant Planning Handbook, which are later transformed by the same court to the

level of "requirements" and a "directive" in subsequent rulings. (Compare 26a-27a with 78a-79a and 103a). The 1966 Joint Policy Statement and the School Plant Planning Handbook, Revised Edition, 1970, represent an admonition to local school boards by the State Board of Education, in the exercise of its leadership function under Mich Const 1963, art 8, § 3, to consider racial balance as one of the factors in selecting new school sites (PX 174, Va13). (Va11-Va12). The Joint Policy Statement and School Plant Planning Handbook admonitions on site selection were never reduced to legally enforceable rules in the State Administrative Code for the reason, as correctly concluded by the trial court, that, after 1962, neither the State Board of Education nor the Superintendent of Public Instruction possessed any power of approval over school site selections made by local boards of education. (36a). Moreover, as testified by the Superintendent of Public Instruction, these two documents were viewed by him as containing recommendations. (IIIa24-IIIa26, IIIa36). We ask this Court to take judicial notice that neither the Joint Policy Statement nor the School Plant Planning Handbook were ever published in the State Administrative Code as required by 1943 PA 88 and Section 46 of its successor act, 1969 PA 306, as amended, MCLA 24.246; MSA 3.560(146), for legally binding administrative rules. (77aa). See *Ranjel* v *City of Lansing*, 417 F2d 321, 322-323 (CA 6, 1969), cert den 397 US 980; 90 S Ct 1105; 25 L Ed 2d 390 (1970), reh den 397 US 1059; 90 S Ct 1352; 25 L Ed 2d 680 (1970), applicable by analogy, in which the Court held that HUD's Low Rent Housing Manual did not have the force of federal law since it was not contained in the Federal Regulations.

The Federal Constitution does not require racial balance. *Spencer* v *Kugler, supra*. Furthermore, the rule is settled that any rights existing solely under state law are neither protected by the Federal Constitution or federal statutes nor enforceable in the federal courts. *Baker* v *Carr*, 369 US 186, 194-195 n. 15; 82 S Ct 691, 698; 7 L Ed 2d 663, 672 (1962). *Gentry* v *Howard*, 288 F Supp 495 (ED Tenn, 1969) Thus, assuming *arguendo* that the admonitions on racial balance in the Joint Policy Statement and School Plant Planning Handbook impose some higher duty upon defendants State Board of Education and Superintendent of Public Instruction than is imposed by the Fourteenth Amend-

ment, the enforcement of such duty is a function for Michigan courts rather than the federal courts.

Although all the construction referred to relates solely to school construction within Detroit, the Court of Appeals' majority opinion transforms such evidence into a conclusion that such construction "fostered segregation throughout the Detroit metropolitan area." (Compare 144a-151a and 157a). It is impossible to conceive how the location and construction of school buildings in Detroit, by the Detroit Board of Education to serve the children residing therein, constitutes multi-school district de jure segregation by the Superintendent of Public Instruction in approving construction plans as to health, fire and safety. Further, such conclusion on appeal is impossible to reconcile with the trial court's express statement that no proofs were taken as to whether any school district, other than Detroit, committed any acts of de jure segregation. (59a-60a).

The whole notion of a metropolitan construction violation by defendants Milliken, et al, or any of them, is pure fiction. As testified by plaintiffs' expert witness, Dr. Foster, in response to a question from plaintiffs' counsel, school districts, including the other 86 school districts in the tri-county area, do not construct school buildings and then invite parents, white or black, to move in and fill up the new schools. Rather, school districts, including the 85 school districts herein, are hard pressed to construct buildings to meet the population growth within their respective boundaries. (IVa260). Further, as testified to by the same expert witness, the movement of whites from central cities to suburban communities "is due to a lot of factors besides desegregation." (IVa254).

Detroit and the other 85 school districts within the counties of Wayne, Oakland and Macomb each has a locally elected board of education with the duty to educate the resident children therein. To this end, each of these locally elected school boards is empowered to acquire sites and construct school buildings that are financed by the sale of bonds and the imposition of general ad valorem property taxes on property within each district to pay off such bonds. See sections 77a, 115, 158, 220a and 356 of the

School Code of 1955, as amended, *supra*. (17aa-19aa, 25aa-27aa, 30aa-31aa, 33aa-34aa). Unless this entire statutory scheme of local governance and finance, involving separate, identifiable and unrelated school districts, *Keyes, supra*, 93 S Ct, at 2695, is unconstitutional for failure to guarantee racial balance within a three county area, the Court of Appeals' majority clearly erred in its purported finding of a multi-school district construction violation. As stated in *Rodriguez, supra*, 411 US, at 54, footnote 110, "[t]his Court has never doubted the propriety of maintaining political subdivisions within the States and has never found in the Equal Protection Clause any *per se* rule of 'territorial uniformity.' . . ."

To summarize, ruling 3 on school construction (151a), is in error both as a matter of fact and of law. As to construction in Detroit, the sites were selected and acquired locally without any power on the part of the Superintendent of Public Instruction to veto same. Further, as to the alleged metropolitan construction violation by way of the defendants Milliken, et al, it is negated both by the trial court's statement that it took no proofs as to whether any school district, other than Detroit, committed any acts of de jure segregation and the uncontradicted testimony of plaintiffs' expert witness that school districts play catch-up in the matter of constructing schools to house their increased populations. (59a-60a, IVa 260).

D. Ruling (2) – the effect of section 12 of 1970 PA 48

Ruling (2) relates to Section 12 of 1969 PA 244, as added by 1970 PA 48, MCLA 388.171a et seq; MSA 15.2298(1a) et seq, which section delayed implementation of defendant Detroit Board of Education's April 7, 1970 racial balance plan affecting 12 of its 21 high schools over a three year period. (114a-116a, 151a). (52aa-58aa). Section 12 of 1969 PA 244, as added by 1970 PA 48, *supra*, was held invalid by the Court of Appeals on October 13, 1970, and the trial court was expressly directed to give no effect to such section at the trial of this cause. However, the Court of Appeals refused to order implementation of the April 7, 1970 plan prior to a trial on the merits. 433 F2d 897, 904-905 (CA 6, 1970).

The ruling by the Court of Appeals, that Section 12 of 1969 PA 244, as added by 1970 PA 48, *supra*, was unconstitutional,

contravenes the settled principle that, on appeal from the denial of a preliminary injunction, the courts will confine their review to the limited question of whether the trial court abused its discretion. Courts will assess the underlying merits only to determine the plaintiff's probability of prevailing on the merits upon remand and trial, particularly where constitutional issues are involved. *Allen* v *Mississippi Commission of Law Enforcement*, 424 F2d 285, 290-291 (CA 5, 1970). *Yahr* v *Resor*, 431 F2d 690 (CA 4, 1970), cert den 401 US 982; 91 SCt 1192; 28 L Ed 2d 334(1971). However, no appeal was sought by the defendants Milliken, et al, for the reason that, in light of the affirmance of the denial of a preliminary injunction, the Detroit Board of Education was left in the same practical situation it would have been in if the Court had adopted the contention of defendents Milliken, et al, that the second sentence of Section 12 was discretionary, not mandatory,[14] i.e., from and after January 1, 1971, the decision to go forward with the April 7, 1970 racial balance would have been reposed in the discretion of the newly constituted Detroit Board of Education. See 433 F2d 987, 904, *supra*, and Sections 1a and 12 of 1969 PA 244, as added by 1970 PA 48, *supra*. 54aa, 58aa).

Based on an opinion from its counsel concerning the effect of the first sentence of Section 12 of 1969 PA 244, as added by 1970 PA 48, *supra*, the Detroit Board of Education did not put into effect the April 7, 1970 racial balance plan. It cannot be said that Section 12 was implemented by the affirmative conduct of any of the defendants Milliken, et al, herein. Indeed, defendant State Board of Education endorsed the April 7 plan. 433 F2d 897, 900-901, *supra*.

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[14] The Court of Appeals, at 433 F2d 897, 904, *supra*, states that the defendants defended Section 12 on the merits in such Court. That is simply not accurate. While the brief of defendants Milliken, et al, did discuss the constitutional question with reference to the first sentence of Section 12, it did so only within the limited context of assessing the probabilities of plaintiffs' success on the merits, upon remand and hearing, as a factor in evaluating the single question of abuse of discretion by the trial judge. As to the second sentence of Section 12, the brief of defendants Milliken, et al, did not address itself at all to the constitutional question, since it was not operative until January 1, 1971, but did inform the Court of Appeals that it was their position that such sentence was directory, not mandatory, when read in light of other unrepealed statutory sections relating to the discretionary authority of boards of education to establish attendance areas. *Hiers* v *Detroit Superintendent of Schools*, *supra*, 376 Mich, at 235.

The only defendant arguably involved with Section 12 is the Governor, who signed into law 1970 PA 48 on July 7, 1970. However, it must be stressed that 1970 PA 48 contained 14 sections dealing with the decentralization of first class school districts to promote the judicially recognized meritorious goal of greater local control over public education. *Wright* v *Council of the City of Emporia, supra,* 407 US, at 469, 478. *Rodriguez, supra,* 411 US, at 49. (54aa-58aa). Further, under Michigan law, the Governor does not possess an item veto except for items appropriating money in appropriation bills. Mich Const 1963, art 4, § 33 and art 5, § 19. Moreover, the language added by Section 2a of 1969 PA 244, as added by 1970 PA 48, *supra,* to the effect that "[r]egions shall be as compact, contiguous and nearly equal in population as practicable" was a necessary addition to the decentralization legislation, in light of the "one-man, one-vote" principle enunciated in *Hadley* v *Junior College District of Metropolitan Kansas City,* 397 US 50; 90 S Ct 791; 25 L Ed 2d 45 (1970), since the regions serve, inter alia, as election districts for 8 members of the central or first class board of education. See Section 2a of 1969 PA 244, as added by 1970 PA 48, *supra.* (54aa-55aa). Finally, these defendants are aware of no judicial authority holding that a chief executive officer, whether it be the President of the United States, governor of a state or mayor of a city, violates the constitution by signing into law a legislative enactment, a portion of which is later held to be unconstitutional. See *Wright* v *Rockefeller,* 376 US 52, 55-57; 84 S Ct 603; 11 L Ed 2d 512 (1964), where the majority opinion discussed, not the intent of the Governor, but the purpose or motivation of the legislature in ascertaining whether the challenged part of the statute was invalid. The record is barren of any evidence of segregatory purpose on the part of defendant Milliken in signing into law 1970 PA 48, *supra.*

From and after October 13, 1970, Section 12 has been legally ineffective, 433 F2d 897, *supra.* The postponement of the April 7, 1970 racial balance plan for one semester by § 12 of 1970 PA 48 affected at most approximately 3,000 to 4,000 tenth grade students in a school district with 289,743 students. See 433 F2d 897, 898-901, *supra,* and (20a). The lack of implementation of the April 7, 1970 plan, since that date, has been the result of the unwillingness of the Detroit Board of Education to implement such

plan and the refusal of the District Court, subsequently affirmed on appeal, to order its implementation. 438 F2d 945 (CA 6, 1971). Thus, Section 12 has long since ceased to have any causal nexus, if it ever had any such effect, to the racial composition of the 12 Detroit high schools included in the April 7, 1970 plan. *Keyes, supra,* 93 S Ct, at 2698, 2699. Further, pursuant to the McDonald Magnet Plan ordered implemented by the trial court, which included both 8 middle schools and 19 high schools, 8,174 students enrolled in this voluntary integration program for the fall of 1971. (Ia 90, Ia 94 and page 1 of the Report of the Detroit Board of Education on the Magnet Plan).

Finally, it must be emphasized that the April 7, 1970 plan, affecting only 12 of 21 Detroit high schools, had no causal connection with the distribution of pupils by race between Detroit and any other school district within the tri-county area of Wayne, Oakland and Macomb counties. Plaintiffs herein continually sought implementation of such plan solely within the School District of the City of Detroit. 433 F2d 897, *supra,* 438 F2d 945, *supra.* Consequently, ruling (2) of the Court of Appeals majority is manifestly erroneous as to defendants Milliken, et al, and affords no basis for the implementation of relief intra-Detroit or among Detroit and other school districts in the tri-county area.

E. Ruling (1) – Detroit Board of Education an agency of the State of Michigan

If Ruling (1) means only that the actions of defendant, Detroit Board of Education, constitute state action within the scope of the Equal Protection Clause, then it merely confirms the obvious and adds nothing to the opinion. (151a). If, on the other hand, this finding constitutes a determination of vicarious liability against either the State of Michigan or the defendants Milliken, et al, based on the conduct of the Detroit Board of Education, then such finding is manifestly in error.

Throughout the course of the proceedings below, plaintiffs' counsel, the trial court and the appellate court have proceeded on the erroneous premise that the State of Michigan is a party defendant herein. (See IIa 44, IIa 70, 33a and the slip opinion of the original appellate panel issued December 8, 1972 which, unlike the

majority opinion on rehearing, did not contain the caveat at 115a to the effect that "The State of Michigan as such is not a party to this litigation."). In addition to not being a party herein, the State of Michigan has not given its consent to this suit in Federal court as required by the Eleventh Amendment and the controlling case law of this Court. *In re State of New York, supra,* 256 US, at 497. This premise, while not in accord with reality, was obviously perceived as a useful fiction in achieving the lower courts' paramount social goal of multi-school district racial balance within a tri-county area.

This premise was given its ultimate effectuation in the orders adding the State Treasurer as a party defendant and compelling the defendants Milliken, et al, to pay funds from the state treasury to purchase 295 buses for a partial, interim multi-district remedy. (Ia 263-Ia 264, 106a-107a). This order, compelling the payment of approximately $3,000,000.00 from the state treasury to acquire 295 buses [a school bus costs approximately $10,000.00, (IVa 18)], is squarely in conflict with the Eleventh Amendment and the controlling case law of this Court that a money judgment payable from the state treasury may not be entered by the Federal courts in the absence of the state's consent. *Parden* v *Terminal Railway Co,* 377 US 184, 186, 192; 84 S Ct 1207, 1210-1211, 1213; 12 L Ed 2d 233, 236, 240 (1964) *Ford Motor Co.* v *Department of Treasury of Indiana,* 323 US 459, 464; 65 S Ct 347, 350-351; 89 L Ed 389, 394 (1945). *In re State of New York, supra,* 256 US, at 500-502.

In addition, as cogently stated by Circuit Judge Weick in dissent, "[t]his order imposed a personal liability on the State defendants and would require them, if they complied with it, to misappropriate and misapply state funds in violation of state law." (215a). Under Michigan law, no money may be paid out of the state treasury except pursuant to appropriations made by law and the power to appropriate state funds is vested in the Michigan legislature, not defendants Milliken, et al. Mich Const 1963, art 9, §17 and art 4, §31. (5aa, 1aa). There is no legislative appropriation pursuant to which the defendants Milliken, et al, have any lawful authority to expend approximately $3,000,000.00 from the state treasury for school buses. By way of contrast, in *Griffin* v *County School Board of Prince Edward County,* 377 US 218, 233;

84 S Ct 1226, 1234; 12 L Ed 2d 256, 266 (1964), this Court stated that county officials could be compelled to "exercise the power that is theirs" to levy local taxes for public education. Here, the power is not theirs to pay out funds for school buses as ordered below. Although the order to pay for buses has been vacated, it is clear that the appellate majority would approve a similar or even more costly order in the future. (190a, 188a).

As noted above, on rehearing the appellate majority recognized that the State of Michigan is not a party to this cause and apparently resorted, albeit cryptically, to a vicarious liability theory. (115a, 151a). To the extent ruling (1) is based upon an agency theory of vicarious liability, it must be stressed that, under settled Michigan law, school districts are local state agencies of legislative creation exercising plenary discretionary power over student assignment within their respective school districts. *Attorney General, ex rel Kies* v *Lowrey*, 131 Mich 639, 644; 92 NW 289, 290 (1902), aff'd 199 US 233; 26 S Ct 27; 50 L Ed 167 (1905). *School District of the City of Lansing* v *State Board of Education*, 367 Mich 591, 595; 116 NW 2d 866, 868 (1962). *Senghas* v *L'Anse Creuse Public Schools*, 368 Mich 557, 560; 118 NW 2d 975, 977 (1962). *Hiers* v *Detroit Superintendent of Schools*, *supra*, 376 Mich, at 235; 136 NW 2d, at 15. The school code of 1955, as amended, *supra*. (6aa-51aa). Thus, assuming arguendo any vitality to an agency theory of vicarious liability, it is clear that the School District of the City of Detroit is not an agent, under Michigan law, of the defendants Milliken, et al.

Indeed, the Court of Appeals' majority opinion expressly rejects any agency theory, as between the defendants Milliken, et al, and local school districts in its holding that any "affected district first must be made a party to this litigation and afforded an opportunity to be heard" and in its recognition that under state law, only the legislature may reorganize the governmental structure of the tri-county area. (177a, 188a, 189a). This vicarious liability is also decisively put to rest in the dissent of Judge Weick. (213a-214a).

This apparent theory of vicarious liability is also put to rest by the majority opinion in *Keyes*, *supra*, 93 S Ct, at 2697, as follows:

"... On the contrary where, as here, the case involves one school [sic] board, a finding of intentional segregation on its part in one portion of a school system is highly relevant to the issue of the board's intent with respect to the other segregated schools in the system. ... "

This Court, in enunciating the shifting burden of proof principle applicable to school desegregation cases, carefully limited its application to situations involving the same defendant. Since misconduct by one defendant, serves only to shift the burden of proof as to that defendant, it cannot be said that misconduct by one defendant is a legally sufficient basis for a finding of vicarious liability as to other defendants.

Needless to say, in passing upon the actions of defendants Milliken, et al, it may hardly be argued that they shed any of their federally protected constitutional rights at the state capitol door. See *Tinker* v *Des Moines Independent School District*, 393 US 503, 506; 89 S Ct 733, 736; 21 L Ed 2d 731, 737 (1969). Like every other citizen their purposeful actions should be judged fairly by the record and in accordance with due process of law.

To summarize, neither lower court made any findings against either the Governor or the Attorney General of purposeful affirmative conduct resulting in de jure segregation. This is not surprising, in light of the uncontradicted testimony of the Superintendent of Public Instruction that neither the Governor nor the Attorney General is involved in the decisions of the Detroit Board of Education or any of the other 616 school district boards of education in Michigan. (IIIa 35-IIIa 36, IIIa 41-IIIa 42). Thus, under *Keyes, supra*, 93 S Ct, at 2696-2697, the case as to these two defendants must be dismissed. This is the sound result reached initially by the District Court herein (Ia 61), and on appeal by Circuit Judge Weick (216a).

The defendant, State Treasurer, was added after the violation hearings so that the District Court could order the State Treasurer to pay funds from the state treasury to purchase 295 buses for the multi-district remedy. As to him also, the case must be dismissed since there is no claim or finding of unconstitutional conduct by him and the settled case law of this Court under the Eleventh Amendment precludes compelling payment of funds out of the

State Treasury where, as here, the State of Michigan has never consented to this suit in Federal Court. *Keyes, supra,* 93 S Ct, at 2696-2697. *Parden* v *Terminal Railway Co, supra,* 377 US, at 186, 192. *Ford Motor Co* v *Department of Treasury of Indiana, supra,* 323 US, at 464. *In re State of New York, supra,* 256 US, at 500-502.

Turning to defendants State Board of Education and Superintendent of Public Instruction, it must first be emphasized that under the controlling case law of this Court, the elements of de jure conduct are affirmative, purposeful state action with an intent to segregate causally connected to a present condition of segregation. *Keyes, supra,* 93 S Ct, at 2696-2699. Applying this controlling legal standard, the rulings against these two defendants must fall. The rulings against the State Board of Education and the Superintendent of Public Instruction, relating to transportation of Carver students by the Detroit Board of Education in the 1950's and school construction in Detroit during the 1960's on sites selected and acquired locally, with locally established attendance areas, do not constitute purposeful segregatory conduct with a present causal effect of segregation as required by *Keyes, supra.* Further, the lower courts herein clearly erred in relying upon alleged inter-district financial disparities as a predicate for finding de jure constitutional violations by these defendants both as a matter of fact and law. *Rodriguez, supra.* Thus, as to de jure segregation in Detroit, the lower court rulings against these two defendants must be reversed.

On the question of whether the defendants Milliken, et al, have committed acts with the purpose and present causal effect of segregating school children by race as between Detroit and the other 85 school districts in the tri-county area, the conclusion is compelled that these defendants have not committed such de jure acts. *Keyes, supra,* 93 S Ct, at 2696-2699. The question of a metropolitan violation as to school construction by these defendants is spurious in light of the express statement that no proofs were taken as to whether any school district, other than Detroit, committed any act of de jure segregation. (59a, 60a). The lower court language herein on this matter represents, not the record in this cause, but the judicial goal of multi-school district racial balance before which all else must fall. Defendants Milliken, et al,

should not be employed as the judicial scapegoat for racial balance over a three-county area. Rather, these defendants deserve to be judged by their actual conduct in office. Judged in this way, the lower court rulings against these defendants must be reversed. [15]

II.

THE RULING OF THE COURT OF APPEALS THAT A DETROIT-ONLY DESEGREGATION PLAN COULD NOT REMEDY THE UNCONSTITUTIONAL SEGREGATION FOUND IN THE DETROIT SCHOOL SYSTEM IS NOT SUPPORTED BY THE RECORD AND IS CLEARLY ERRONEOUS AS A MATTER OF LAW.

A. The lower courts rejected the constitutional concept of a unitary school system within Detroit for the sociological concept of racial balance throughout a three-county area.

Plaintiffs Bradley, et al, in their complaint, specifically prayed for the "elimination of the racial identity of every school in the (Detroit) system and to maintain now and hereafter a *unitary nonracial school system.*" (15a). Plaintiffs' prayer mirrored the well-settled case law of this Court that a de jure segregated school district be dismantled so that the *system should then be unitary*, as required by *Green* v *School Board of New Kent*

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[15] It is the position of the defendants Milliken, et al, as it has been throughout this litigation, that evidence of alleged racial discrimination in housing by anyone other than the named defendants is irrelevant and inadmissible in a school desegregation case. (II a 9-10) *Swann* v *Charlotte-Mecklenburg Board of Education*, supra, 402 US, at 22-23 (1971). Further, while the trial court opinions contain sweeping generalizations about racial discrimination in housing, they contain no concrete references to any alleged acts of racial discrimination in housing by any of the defendants Milliken, et al. (See, for example, 23a-24a). The reason is that there is nothing in the record to support any specific findings of racial discrimination in housing as to these defendants. Further, under Michigan law, persons allegedly discriminated against in private housing may seek relief from the state Civil Rights Commission and the state courts. See Mich Const 1963, art 5, §29, *Beech Grove Investment Company* v *Civil Rights Commission*, 380 Mich 405; 157 NW 2d 213 (1968). 1968 PA 112, MCLA 564.101 *et seq.*; MSA 26.1300 (101) et seq. (2aa, 3aa).

County, supra, 391 US, at 436; *Alexander* v *Holmes County Board of Education, supra,* 396 US, at 20; and *Swann* v *Charlotte-Mecklenburg Board of Education, supra,* 402 US, at 15.

The District Court found the Detroit School District to be de jure segregated. As defendants Milliken, et al, have demonstrated in Part I of this brief, the Detroit School District is not a dual school system because of any purposeful actions by these defendants. Defendants Milliken, et al, also do not believe that the Detroit School District is a dual school system because of any purposeful action by the defendant Detroit Board of Education.

The trial court found that "[t]he principal causes (of segregation in the Detroit public schools) undeniably have been population movement and housing patterns." (33a). It is submitted that, indeed, the cause of segregation in Detroit's public schools is racial residential concentration, not the de jure conduct of the Detroit Board of Education. For example, on the question of faculty segregation the District Court concluded, based on 30 specific findings of fact, that "[t]he Board and the intervening defendant union have followed a most advanced and exemplary course in adopting and carrying out what is called the 'balanced staff concept' – which seeks to balance faculties in each school with respect to race, sex and experience, with primary emphasis on race." (28a-32a). Thus, the trial court found no de jure faculty segregation in the Detroit public schools.

Turning to pupil segregation, the lower courts relied heavily upon optional attendance areas in finding de jure segregation. (24a-25a, 139a-140a). The record does not support the conclusion that these optional attendance areas were created and maintained with the purpose and effect of segregating pupils by race, since the option was equally available to all students living in the area. In any event, it is undisputed that by the 1970-71 school year all such optional attendance areas had been eliminated with one minor exception. Further, during the decade of the 1960's the elimination of such areas was done in a manner that contributed to increased pupil integration as testified to by one of plaintiffs' witnesses. (R2391, R2392, R2393, R2398, R2399, R2407, R2411). In addition, the elimination of the last optional attendance area in 1970 manifestly contributed to integration at South-

western High School. (25a). Moreover, as found by the trial court, the present effect of these optional attendance areas was limited to 11th and 12th grade students at one high school and disappeared at the end of the 1972-73 school year. (25a). Thus, these optional attendance zones do not constitute conduct with either the purpose or present causal effect of de jure segregation. *Keyes, supra,* 93 S Ct, at 2697-2699.

In terms of transportation to relieve overcrowding, both lower courts ruled that the Detroit Board had done so in a segregatory manner by transporting black pupils past predominantly white schools to predominantly black schools. (25a, 129a-130a). However, an examination of defendant's Exhibit JJ reveals that, during the decade of the 1960's, the vast majority of transportation to relieve overcrowding was from sending schools with a higher percentage of black students to receiving schools with a lower percentage of black students, thereby increasing integration. (DX JJ, Va 169).

Turning to school construction, both the lower courts concluded that the Detroit Board of Education constructed schools in a segregatory manner, based almost exclusively on examples of schools or additions to schools that opened with predominantly black student bodies in the years immediately preceding the time of trial. (27a, 144a-151a). In *Swann, supra,* 402 US, at 20, this Court stated:

> "The construction of new schools and the closing of old ones are two of the most important functions of local school authorities and also two of the most complex. They must decide questions of location and capacity in light of population growth, finances, land values, site availability, through an almost endless list of factors to be considered. . . ."

In contrast with this Court's perceptive analysis of the multiple factors involved in school construction, the approach of the lower courts herein gives no attention to any of these factors in assessing the alternatives available to the Detroit Board of Education in light of the racially concentrated demography of the city, site availability, land values and costs, together with population growth and traffic patterns in a densely populated urban area plus

the many other factors relating to school construction decisions.

An examination of defendant's exhibit NN reveals that, at the time construction was authorized for a substantial number of these schools, the per cent black was above 10% and under 90%. However, either by the time the construction process was completed and the school opened or by 1970 some of these schools had become 90% or more black due to demographic changes over which the Detroit school board had no control. (DX NN, Va 102). Further, looking at the high schools on the same exhibit, it is significant that 7 of the 13 high schools listed there, drawing from geographically larger attendance areas, are substantially integrated. (DX NN, Va 102). In fact, the schools were built where they were needed to house the school age children residing within the school district. Indeed, under the rationale employed by the lower courts for a multi-district remedy, the pattern of school construction in Detroit is irrelevant since a unitary system may not be established within the Detroit school district in any event.

The *present* Detroit Board of Education, exercising its independent legal status under Michigan law, has elected, both in the Court of Appeals and in this Court, to acquiesce in the de jure findings against it and, in effect, gamble that through a racially balanced multi-district remedy a unitary system composed of majority black schools in the Detroit School District will not be necessary. (221a) Thus, the next question to be addressed is whether the simple demographic fact of a black pupil majority precludes the establishment of a unitary system of schools in the Detroit School District.

The District Court ordered the defendant Detroit Board of Education to submit plans for the desegregation of its schools. (43a) It submitted Detroit-Only desegregation plans A and C.

Plaintiffs Bradley, et al, submitted a Detroit-Only Plan, hereafter designated as plaintiffs' plan, prepared by Dr. Gordon Foster, an expert widely utilized by the National Association for the Advancement of Colored People in school desegregation cases, and a member of the desegregation panel designated by the District Court. (PXC 2, R 303, 304, 316.) At the hearing on the Detroit-Only plan, the uncontradicted testimony of Dr. Foster established

that plaintiffs' plan met the constitutional requirements of the Fourteenth Amendment (IV 95 - IV 96), that it would eliminate racially identifiable schools in the Detroit School District (IV 96), that plaintiffs' plan was a sound educational plan (IV 98) and that plaintiffs' plan would improve the educational opportunities of the school children of Detroit.

The District Court rejected out-of-hand defendant Detroit Board of Education's Detroit-Only Plans A and C and made the following findings of fact and conclusions of law relating to plaintiffs' Detroit-Only plan:

"PLAINTIFFS' PLAN

"1. The court finds that Plaintiffs' Plan would accomplish more desegregation than now obtains in the system, or would be achieved under Plan A or Plan C.

"2. We find further that the racial composition of the student body is such that the plan's implementation would clearly make the entire Detroit public school system racially identifiable as Black.

* * *

"4. The plan would entail an overall recasting of the Detroit school system, *when there is little assurance that it would not have to undergo another reorganization if a metropolitan plan is adopted.* (Emphasis added.)

* * *

"6. *The plan does not lend itself as a building block for a metropolitan plan.* (Emphasis added.)

"7. The plan would make the Detroit school system more identifiably Black, and leave many of its schools 70 to 90 per cent Black.

"8. It would change a school system which is now Black and White to one that would be perceived as Black, thereby increasing the flight of Whites from the city and the system, thereby increasing the Black student population.

* * *

CONCLUSIONS OF LAW

* * *

"2. On the basis of the court's finding of illegal school segregation, the obligation of the school defendants is to adopt and implement an educationally sound, practicable plan of desegregation that promises realistically to achieve now and hereafter the greatest possible degree of actual school desegregation. *Green* v. *County School Board*, 391 U.S. 430; *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19; *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290; *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1.

* * *

"4. Plaintiffs' Plan, while it would provide a racial mix more in keeping with the Black-White proportions of the student population than under either of the Board's plans or as the system now stands, would accentuate the racial identifiability of the district as a Black school system, and would not accomplish desegregation.

"5. The conclusion, under the evidence in this case, is inescapable that relief of segregation in the public schools of the City of Detroit cannot be accomplished within the corporate geographical limits of the city. . . .

"That the court must look beyond the limits of the Detroit school district for a solution to the problem of segregation in the Detroit public schools is obvious; that it has the authority, nay more, the duty to (under the circumstances of this case) do so appears plainly anticipated by Brown II, seventeen years ago. While other school cases have not had to deal with our exact situation, the logic of their application of the command of Brown II supports our view of our duty." (54a, 55a, 56a, 57a).

Although the District Court expressly cited *Green, supra, Alexander, supra,* and *Swann, supra,* as controlling precedents for the desegregation of a de jure segregated school district (56a), a study of the Findings of Fact and Conclusions of Law on Detroit-Only Plans of Desegregation, March 28, 1972 (53a), compel the conclusion that the District Court misread and misapplied the teachings of this Court so clearly enunciated therein. This came as no surprise to these defendants since the District

Court, by its observations and findings, had clearly marked the road upon which it had embarked. The following reflect some of the check points of that journey:

> "THE COURT: In other words, if the projection, and I will be surprised if it doesn't follow the course which history has shown since 1940, if the projection is in that direction then this occurs to me, how do you integrate a school district where the student population is, *let's make a guess*, 85 to 95 percent black? How do you integrate it? (Emphasis added).
>
> (R 3537).
>
> "THE COURT: Mr. Ritchie has made some points along that line, and I have, and to repeat mine as I have said to several witnesses in this case: 'How do you desegregate a black city, or a black school system;' That is why I was interested in the projections of the student population of the city. We end up with student population of Detroit of 80 to 85 percent black. How do you integrate, or, if I find segregation, to put it another way, how do I desegregate. . . ."
>
> (R 4003, R 4004).

The overriding concern of the District Court with the speculative black student population of the Detroit School District in 1975, 1980 and 1992 is underscored by the following statement contained in the Ruling on Issue of Segregation rendered on September 27, 1971:

> ". . . The percentage of black students in the Detroit Public Schools in 1975-76 will be 72.0%, in 1980-81 will be 80.7% and in 1992 it will be virtually 100% if the present trends continue. . . ." (20a).

Seven days later at the pretrial of all counsel in the case, even before Detroit-Only plans of desegregation had been ordered, let alone prepared or hearing held, the District Court said:

> "As the Court indicated during the course of taking proofs it entertains serious reservations about a plan of integration, which encompasses no more than the public schools of the city of Detroit. . . .
>
> ". . . We must bear in mind that the task that we are called upon to perform is a social one which society has been un-

able to accomplish. In reality our courts are called upon, in these school cases, to attain a social goal through the education system, by using law as a lever." (40a-41a).

In affirming the decision of the District Court rejecting each Detroit-Only desegregation plan, the majority of the Court of Appeals made the following comment:

> "... This record presents a wholly new fact pattern in a school segregation case so far as this Circuit is concerned. This court never before has been confronted by a finding that any less comprehensive a solution than a metropolitan area plan would result in an all black school system immediately surrounded by practically all white suburban school systems, with an overwhelmingly white majority population in the total metropolitan area." (163a-164a).

Judge Weick and Judge Kent, dissenting, characterized, correctly, the action of the majority of the Court of Appeals as an attempt to overcome demographic racial imbalance as between the Detroit School District and other school districts in the tri-county area of Wayne, Oakland and Macomb rather than correcting constitutional violations limited to the Detroit School District. (191a-193a, 224a-225a).

Both the District Court and the majority of the Court of Appeals, in their haste to use the law as a lever through the educational system to achieve the social goal of racial balance in an area covering 1,952 square miles, approximately the size of the state of Delaware, more than half again the size of Rhode Island and almost 30 times the size of the District of Columbia, and affecting approximately 1,000,000 children and their parents, have lost sight of the uncontroverted fact that the Detroit School District enrollment is composed of 63.8% black children and 34.8% white children, (21a, 22a) and the controlling teachings of *Green*, *Alexander* and *Swann*.

B. The teachings of *Green*, *Alexander* and *Swann* examined.

Green, *supra*, involved a school district 57% black and 43% white, not unlike the Detroit School District here in racial composition but much smaller in pupil enrollment, operating a dual

school system by maintaining a separate school for blacks and a separate school for whites. This Court rejected a "freedom of choice" plan which resulted in the black school remaining black.

> "The pattern of separate 'white' and 'Negro' schools in the New Kent County school system established under compulsion of state laws is precisely the pattern of segregation to which *Brown I* and *Brown II* were particularly addressed, and which *Brown I* declared unconstitutionally denied Negro school children equal protection of the laws. Racial identification of the system's schools was complete, extending not just to the composition of student bodies at the two schools but to every facet of school operations–faculty, staff, transportation, extracurricular activities and facilities. In short, the State, acting through the local school board and school officials, organized and operated a dual system, part 'white' and part 'Negro.'
>
> "It was such dual systems that 14 years ago *Brown I* held unconstitutional and a year later *Brown II* held must be abolished; school boards operating such school systems were required by *Brown II* 'to effectuate a transition to a racially nondiscriminatory school system.' 349 US, at 301. . . . *The transition to a unitary, nonracial system of public education* was and *is the ultimate end to be brought about;* . . ." 391 US, at 435-436. (Emphasis added.)

This Court mandated that the school district convert to a *unitary system* now, in which racial discrimination would be eliminated root and branch.

> ". . . The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, [footnote omitted] fashion steps which promise realistically to convert promptly to a system without a 'white' school and a 'Negro' school, *but just schools*." 391 US, at 442. (Emphasis added.)

Thus, the rule of *Green, supra*, requires that a dual school system be converted now to a unitary, nonracial system, composed of just schools.

When this Court recently rendered its decision in *Keyes, supra*, 93 S Ct, at 2693, 2694, at footnote 11, it confirmed that *Green, supra*, remains the governing principle.

In *Alexander, supra*, this Court, relying on *Green, supra*, and *Griffin* v *County School Board, supra*, restated the standard for the desegregation of dual school systems and ordered several Mississippi school districts:

> "... to operate as *unitary school systems* within which no person is to be effectively excluded from any school because of race or color." 396 US, at 20. (Emphasis added.)

The holding in *Alexander* defines a unitary system as one within which no pupil is excluded from any school because of race or color.

In *Swann, supra*, the Court had before it a desegregation plan for a dual system school district composed of a pupil population of 71% white and 29% black. Two-thirds of the black pupils, numbering approximately 14,000, were attending totally or more than 99% black schools. The case came before this Court at a time when school districts and particularly the federal courts needed the assistance and guidance of the high court in dismantling dual school systems. See footnote 5, 402 US, at p 14.

This Court distilled its holdings in *Green, supra*, and *Alexander, supra*, and unanimously reaffirmed the standard to be followed:

> "The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation. Segregation was the evil struck down by Brown I as contrary to the equal protection guarantees of the Constitution. That was the violation sought to be corrected by the remedial measures of Brown II. That was the basis for the holding in Green that school authorities are 'clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.' 391 US, at 437-438, 20 L Ed 2d at 723." 402 US, at 15.

***

> "Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools." 402 US, at 23.

The Court then gave fair warning that its ruling should not be misapplied:

> "... If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must *always* reflect the racial composition of the school system as a whole." 402 US, at 24. (Emphasis added.)

Finally, the Court in *Swann* said:

> "It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system...." 402 US, at 31-32.

The holdings in *Swann, supra*, are clear. A school district operating as a dual school system must dismantle its de jure segregated system so that it operates a unitary system wherein no pupil of a racial minority shall be excluded from any school, directly or indirectly, on account of race or color. There is no constitutional right to a particular degree of racial balance or mixing within such school district. The Constitution does not require that every school must always reflect the racial composition of the school district. Nor does it mandate that federal judges make annual adjustments in the racial compositions of schools because of demographic changes.

C. The teachings of *Green*, *Alexander* and *Swann*, were unheeded and ignored.

The salutary purposes of the unanimous Court in *Swann*, *supra*, to assist federal courts in the dismantling of dual school systems through reasonably precise instructions as to the remedial powers of such courts were unheeded and ignored by the District Court and the majority of the Court of Appeals. Both the decision of the District Court and the majority of the Court of Appeals contain no finding that plaintiffs' Detroit-Only plan would not convert the Detroit school system into a unitary system because pupils of a racial minority would be excluded from any school within the Detroit school system, directly or indirectly, because of race or color, under such plan.

Rather, the District Court was preoccupied with other tests and standards, not enunciated by this Court, such as the failure of the plan to be a building block for a metropolitan plan (55a) and that the plan was inadequate because, somehow, the Detroit School District, 63.8% black and 34.8% white, would be perceived as a black school district rather than a black and white school district. (56a).

While the conclusions of law of the District Court on the Detroit-Only plans expressly cite *Green*, *supra*, *Alexander*, *supra*, and *Swann*, *supra* (56a), the District Court concluded that plaintiffs' plan, even though it did provide a racial mix more in keeping with the black-white proportions of the student population, would not accomplish desegregation because it would accentuate the racial identifiability of the district as a black school system. (56a). The District Court cited no legal authority for such conclusion and, indeed, there is none. Based upon the record below, had the district judge applied the controlling standard enunciated in *Green*, *supra*, *Alexander*, *supra*, and *Swann*, *supra*, it would have been compelled to find that plaintiffs' Detroit-Only plan would provide for the establishment of a unitary system in which no child is excluded from any school, directly or indirectly, because of race or color, as required by this Court in *Green*, *supra*, *Alexander*, *supra*, and *Swann*, *supra*.

The majority of the Court of Appeals affirmed these findings and conclusions of law. Although the total opinion contains many references to *Green*, *supra*, and *Swann*, *supra*, the majority failed

to heed and ignored the lessons contained therein. It is clear that the majority of the Court of Appeals was aware of the uncontroverted fact that the racial pupil composition of the Detroit School District was 63.8% black and 34.8% white (21a-22a), yet the majority of the Court of Appeals made the observation that if plaintiffs' Detroit-Only plan were adopted, it would result in "an all black school system." (164a).

There can be no question but that both the District Court and the majority of the Court of Appeals sought to provide for more than a correction of the alleged constitutional violation through establishment of a unitary system in which no pupil is excluded from any school, directly or indirectly, because of race or color, but instead sought to overcome the demographic racial imbalance between Detroit and suburban communities.

Racial imbalance as a result of demographic residential patterns, as contrasted with state enforced segregation within a school district, is not offensive to the Constitution. *Spencer* v *Kugler, supra.*

> "... Brown never required anything more than a unitary school system ..." *Spencer* v *Kugler, supra,* 326 F Supp, at 1241.
>
> ***
>
> "The Court in *Swann* draws a *critical distinction* between those states which have a history of dual school systems and a separation of the races ... and those wherein so-called *'de facto'* segregation results from housing patterns and conventional drawing of school district zones."
>
> ***
>
> "A continuing trend toward racial imbalance caused by housing patterns within the various school districts is not susceptible to federal judicial intervention. ..." *Spencer* v *Kugler, supra,* 326 F Supp, at 1242-1243.

Clearly, the rulings of the District Court and the majority of the Court of Appeals are in direct conflict with the controlling authorities of this Court.

D. This Court has consistently required majority black school systems to convert to unitary school systems without regard to achieving racial balance among such

majority black school systems and larger geographical areas.

The effect of the decision of the majority of the Court of Appeals must be that a unitary system may not be constitutionally established in a majority black school district. Yet, this Court, on many occasions, has mandated that a majority black dual system school district must operate a unitary school system within the district. The attention of the Court is first invited to *Wright* v *Council of City of Emporia, supra,* in which the Court considered and rejected efforts to carve out a new school district from the territory of a district that had not completed dismantling of a dual school system, and said:

> "According to figures later supplied to the District Court, there were 3,759 children *enrolled in the unitary system contemplated by the desegregation decree, of whom 66% were Negro and 34% were white* . . . ." 407 US, at 457. (Emphasis added.)

The Court also held:

> "Just as racial balance is not required in remedying a dual system, neither are racial ratios the sole consideration to be taken into account in devising a workable remedy." 407 US, at 465.

While in *Wright, supra,* the Court divided 5-4, it is significant that in dissent it was found that the county school district, excluding the city of Emporia, would be fully unitary and nonracial even though its composition of pupils would be 72% black and 28% white. 407 US, at 475.

The decisions below are also contrary to *Cotton* v *Scotland Neck City Board of Education, supra,* where the Court disapproved the detachment of territory from a school district found to be operating a dual school system, an even more striking affirmation of the proposition that desegregation can be accomplished in a school district which is predominantly black. In *Scotland Neck, supra,* the school district, formerly dual, was composed of 77% black, 22% white and 1% American Indian. In a unanimous decision the court failed to allude to any constitutional infirmity in the intra-district remedy and in fact referred to the "unitary system" which would take effect. 407 US, at 486.

In *Raney* v *Board of Education of the Gould School District, supra,* a 60% black school district found to be a dual school system attempted to desegregate its schools by means of a "freedom of choice plan." As in *Green, supra,* three years later the Field School remained all black. Relying upon *Green, supra,* the Court found the freedom of choice plan inadequate "to convert to a unitary, nonracial system." 391 US, at 447.

This Court also harbored no doubts in *Green, supra,* that a unitary system could be established in a district with a 55% black majority and even suggested means for its accomplishment.

These cases unequivocally demonstrate that there is no constitutional requirement that the conversion of a majority black school district to a unitary system be effectuated by involving surrounding school districts. To the contrary, these cases stand for the proposition that unitary systems may be, indeed, must be, achieved within majority black school systems. The District Court's decision, that Detroit could not be integrated because it would be perceived as black, is contrary to *Swann, supra,* because the District Court imposed racial balance in a large geographical area rather than order conversion to a unitary system in which no student is excluded from any school, directly or indirectly, because of race or color. Almost every school district in the country is either majority white or majority black and thus is susceptible of being perceived as such. This numerical fact of life obviously gives rise to no constitutional infirmity, whether the pupil majority be white or black, unless, somehow, the law is that school systems with white majorities are to be preferred as superior to school systems with black majorities, a concept without support in any decision of this Court.

Moreover, the ruling below that the broad remedial equitable power of a Federal District Court is insufficient to create a unitary school system within Detroit compels the conclusion that both lower courts have ruled, in effect, that the racial demographic pattern both within Detroit and between Detroit and other tri-county school districts is inherently unconstitutional. Such result is both unsupported by precedent and directly in conflict with the prior decisions of this Court cited above.

The holding of the lower courts that it is constitutionally impermissible to operate a unitary system within the Detroit school system because it is 63.8% black, 34.8% white, is in direct conflict with the decision of the Fourth Circuit Court of Appeals. *Bradley* v *School Board of Richmond, Virginia, supra.* In *Bradley* v *Richmond, supra,* the District Court approved a plan of desegregation of a segregated school district, 64% black and 36% white. The Richmond Board of Education, shortly after the desegregation plan was implemented, moved the District Court to join the school district with two neighboring majority white school districts to provide a "better" racial mix. The Fourth Circuit squarely held that there is no federally protected right to racial balance within even a single school district, only a right to attend a unitary school system. Once a unitary school system was operative within the school district, 64% black and 36% white, the authority of the District Court to further intervene by racially balancing with majority white school districts was neither necessary nor justifiable. It is respectfully submitted that the holding in *Bradley* v *Richmond, supra,* is sound. It clearly stands for the proposition that a unitary school system can be achieved and be operative within a school district that is 63.8% black and 34.8% white.

The attention of the Court is particularly invited to the decision of the Sixth Circuit in *Northcross* v *Board of Education of Memphis, supra,* requiring a unitary system within a segregated school district composed of 134,000 pupils, 57% black and 43% white. In that case, the Court of Appeals asked counsel for plaintiffs, who is also chief trial counsel for plaintiffs here, to advise what would be a unitary system in Memphis:

> "He replied that such a system would require that every public school in Memphis there would have to be 55% Negroes and 45% whites. Departures of 5% to 10% from such rule would be tolerated. . . ."

On December 4, 1973, the Court of Appeals, over Plaintiffs objection, affirmed a desegregation plan for the majority black Memphis School District that would leave substantial numbers of black students in both all black schools and predominantly black schools, totalling 25 schools. *Northcross* v *Board of Education of Memphis City Schools,* ____ F2d____ No. 73-1667, 73-1954, Slip Opinion, pp 3, 5 (1973).

The decisions below are also inconsistent with the decision of the Sixth Circuit, sitting en banc, in *Goss* v *Board of Education of City of Knoxville*, 482 F2d 1044 (CA 6, 1973), where the Court found that the school authorities took affirmative action to improve the racial mix so that the district was operating a unitary system. Relying upon *Swann, supra*, the Court declined to order extensive busing to obtain a certain percentage of black students in each school even though "some schools in the Knoxville system will remain identifiably black or white on the basis of pupil enrollments." 482 F2d at 1046. The Knoxville School District's racial composition was 16.5% black. *Goss* v *Board of Education, City of Knoxville*, 340 F Supp 711, 716 (ED Tenn, 1972).

It is beyond question that a 63.8% black dual system school district can be dismantled and converted to a unitary system in which no pupil is excluded from any school, directly or indirectly, because of race, or color, *Green, supra*, and *Swann, supra*, and in which there are only schools. *Alexander, supra*. By engaging in sheer conjecture as to the racial composition of the Detroit School District in 1975, 1980 and 1992 (20a) and erroneously labeling the district as all black (163a-164a), contrary to the uncontroverted record (21a-22a), the lower courts sought to erect a predicate so as to use the law as a lever, in the field of education, to achieve the social goal of racially balancing a geographical area as large as the State of Delaware, larger than the State of Rhode Island, and [illegible] times the size of the District of Columbia.

Since *Swann, supra*, proscribes year by year judicial adjustments in pupil assignments because of changing demographic patterns within a school district, and *Green, supra*, requires desegregation of a dual system school district *now*, the purely conjectural student population of the Detroit School District in 1975, 1980 and 1992 cannot form the basis for the conclusion of the District Court that a unitary system cannot be established within the majority black Detroit School District.

Plaintiffs' Detroit-Only plan was prepared by Dr. Foster. It is the uncontroverted testimony of Dr. Foster that the plan meets constitutional requirements, eliminates racially identifiable schools and is a sound educational plan. Thus, plainly, such plan would

result in a unitary system of schools within the Detroit School District, in which no child would be excluded from any school, directly or indirectly, because of race or color. That is all the Constitution requires.

III.

THE DECISION OF THE LOWER COURTS THAT A MULTI-SCHOOL DISTRICT REMEDY IS CONSTITUTIONALLY PERMISSIBLE HEREIN IS MANIFESTLY ERRONEOUS.

A. Scope of multi-district remedy decreed below and sought on remand by plaintiffs' amended complaint.

Plaintiffs' complaint herein alleged de jure segregation only within the confines of the School District of the City of Detroit and prayed for relief limited to establishing a unitary system of schools only within the City of Detroit. (5a, 14a, 15a). After a lengthy trial on the merits, at which no school district other than Detroit was present as a party in the cause, the District Court ruled that the Detroit school system was being operated as a de jure segregated school system.

Subsequently, the trial court proceeded to enter the most sweeping remedial decree ever entered in a school desegregation case, judicially creating a 53 school district desegregation area involving 780,000 or approximately 1/3 of Michigan's puplic school pupils. This remedial decree mandated and compelled the reassignment of pupils and faculty across school district boundaries and compels massive transportation of 310,000 pupils throughout an area covering approximately 700 square miles for the sole purpose of achieving racial balance. (72a, 101a-102a).

Thereafter, the trial court commanded the defendants Milliken, et al, to pay for the acquisition of at least 295 buses for use in a partial, interim, multi-district desegregation plan during the 1972-73 school year. The cost of this initial order to acquire transportation would have been approximately $3,000,000.00 since one school bus meeting Michigan standards costs approximately $10,000.00. (106a-107a, IVa 18).

The appellate majority, while affirming the propriety and necessity of a multi-school district remedy, partially vacated the multi-district remedial decrees for the sole reason that 18 affected school districts within the desegregation area had never been made parties to this cause, contrary to Rule 19, FR Civ P. (173a, 176a-179a). However, it is clear that upon remand all school districts made parties to the cause may be included in the multi-district remedy.

On remand, plaintiffs filed their Amended Complaint to Conform to Evidence and Prayer for Relief, which, at paragraph 15, seeks pupil and staff reassignment in virtually the same desegregation area previously decreed by the trial court. (Compare 101a and Ia 297). Further, plaintiffs are seeking relief as to the remaining 32 school districts in the tri-county area by way of judicial monitoring of school construction and staff hiring, indefinitely, thus constituting a federal judicial receivership for the foreseeable future for the tri-county area of Wayne, Oakland and Macomb. (Ia 297-Ia 298). Pursuant to plaintiffs' motion and order of the trial court, all of the school districts in the tri-county area, except Pontiac, are now parties to this cause. (Ia 300-Ia 303).

B. This massive multi-school district relief is not based upon any constitutional violation involving the manipulation of school district boundaries for purposes of de jure segregation of pupils between Detroit and the other 85 school districts in the tri-county area.

In ordering the most sweeping relief ever in a school desegregation case, the District Court candidly stated the following:

> "... It should be noted that the court has taken no proofs with respect to the establishment of the boundaries of the 86 public school districts in the counties of Wayne, Oakland and Macomb, nor on the issue of whether, with the exclusion of the city of Detroit school district, such school districts have committed acts of de jure segregation." (59a-60a).

The appellate majority, in affirming multi-school district relief, did not set forth any conclusion that school district boundaries had been established or altered for unconstitutional pur-

poses. (174a). Further, plaintiffs' amended complaint, like their original complaint, does not allege any constitutional violation as to the establishment and alteration of the boundaries of Detroit or any other school district in the tri-county area. (2a-16a, Ia 291-Ia 299).

This total lack of pleaded allegations, proofs and findings is not surprising in light of the fact that Michigan law established the coterminous school district and city boundaries of Detroit over 100 years ago in 1842 as follows:

> "That the city of Detroit shall be considered as one school district, and hereafter all schools organized therein, in pursuance of this act, shall, under the direction and regulations of the board of education, be public and free to all children residing within the limits thereof, between the ages of five and seveenteen years, inclusive."
>
> See Section 1 of 1842 PA 70 (52aa).

Moreover, some 98 years later, in 1940, the population of the City of Detroit was approximately 90% white, thus negating any possible inference that the city and school district boundaries were made coterminous for the purpose of separating people or school children on the basis of race. (21a).

In *Spencer* v *Kugler, supra,* plaintiffs challenged the racial imbalance existing among New Jersey's school districts. The three-judge court, in rejecting plaintiffs' challenge, noted that under New Jersey law, school district boundaries conform to municipal boundaries, 326 F Supp, at 1240, and held the following:

> "A continuing trend toward racial imbalance caused by housing patterns within the various school districts is not susceptible to federal judicial intervention. The New Jersey Legislature has by intent maintained a unitary system of public education, albeit that system has degenerated to extreme racial imbalance in some school districts; nevertheless the statutes in question as they are presently constituted are constitutional." 326 F Supp, at 1243.

On appeal, this Court affirmed, Mr. Justice Douglas dissenting. It is impossible to reconcile this Court's affirmance in

Spencer v *Kugler, supra,* with the lower courts' decisions herein in view of the historical, rational and racially neutral nature of the coterminous boundaries of the city and school district of Detroit.

This Court has responded favorably to demands for judicial redrawing of local government lines only where a showing was made that such lines had been drawn with the purpose and effect of depriving persons of constitutional rights. Compare *Gomillion* v *Lightfoot,* 364 US 339, 341; 81 S Ct 125, 127; 5 L Ed 2d 110, 113 (1960), where the statute in question redefined the city of Tuskegee's boundaries from a square to a "twenty-eight-side figure," thereby removing "from the city all save only four or five of its 400 Negro voters while not removing a single white voter or resident." In the absence of any finding below that the school district boundary lines involved herein are "the product of a state contrivance to segregate on the basis of race or place of origin," the multi-district remedy decreed below must fall. *Wright* v *Rockefeller, supra,* 376 US, at 58.

It must also be observed that 9 of the 52 school districts, other than Detroit, included in the judicially created desegregation area have student body compositions ranging from 9.5% black upwards. (PX P.M. 12, Va111-Va115). This vividly illustrates that school district boundaries have not been manipulated to separate school children by race. It is simply inaccurate to perceive Detroit as a black island surrounded by an all white sea.

In short, there is simply no school district boundary violation herein as a predicate for multi-district relief. In the absence of any pleaded allegations, proofs and findings as to the manipulation of school district boundaries for the purpose of separating school children by race between Detroit and the other school districts in the tri-county area, multi-school district relief herein must fail. Racial imbalance among school districts, as a result of housing patterns, does not violate the Equal Protection Clause. *Spencer* v *Kugler, supra.*

C. This massive multi-school district remedy is not supported by any de jure conduct of any of the school districts to be affected.

As observed above, in setting forth the massive scope of its multi-school district remedy, the District Court expressly stated:

> "... It should be noted that the court has taken no proofs with respect to the establishment of the boundaries of the 86 public school districts in the counties of Wayne, Oakland and Macomb, nor on the issue of whether, with the exclusion of the city of Detroit school district, such school districts have committed acts of de jure segregation." (59a-60a).

The appellate majority, while affirming the need for a multi-school district remedy, did not set forth any constitutional violations as to the conduct of the school districts, other than Detroit, to be included in the remedy. (172a-175a). Indeed, plaintiffs' amended complaint refrains from alleging de jure conduct as to any school district other than Detroit. (Ia294, 295).

Here, it must be stressed that, in the language of *Keyes, supra*, 93 S Ct, at 2695, each school district herein is a separate identifiable and unrelated unit. Under Michigan law, each school district is an independent body corporate with its own locally elected board of education exercising plenary discretionary authority over the educational system within its school district boundaries. See Sections 352, 491 and relevant portions of Sections 561 through 623 of the School Code of 1955, *supra*. MCLA 340.352, 340.491; MSA 15.3352, 15.3491. (34aa-35aa, 43aa-51aa). Thus, it is beyond dispute that, whatever the conduct of the Detroit Board of Education, its conduct cannot be imputed to any of the other school district defendants herein.

In the posture of this cause, the imposition of a multi-district remedy upon the school districts, not including Detroit, within the tri-county area constitutes the granting of a remedy in the absence of a constitutional violation. This is contrary to the controlling principles concerning school desegregation remedies unanimously enunciated by this Court in *Swann, supra*, as follows:

> "In seeking to define even in broad and general terms how far this remedial power extends it is important to remember that

judicial powers may be exercised only on the basis of a constitutional violation. . .

". . . As with any equity case, the nature of the violation determines the scope of the remedy. . ." 402 US, at 16.

Here, the violation or condition found to offend the Constitution is expressly limited to de jure segregation within the Detroit school system, which condition may be remedied as set forth in Part II herein in accordance with *Green, supra, Alexander, supra* and *Swann, supra.* The courts below, contrary to the controlling principles of *Swann, supra,* have expanded the remedy to include scores of other school districts without the support of any claims, proofs or findings concerning any conduct resulting in de jure segregation by any school district other than Detroit.

D. This massive multi-school district remedy is not supported by any conduct of defendants Milliken, et al, with the purpose and present causal effect of segregating children by race as between Detroit and the other school districts in the tri-county area.

The appellate majority relies heavily upon the alleged de jure conduct of the defendants Milliken, et al, in attempting to provide a legal rationale for the imposition of multi-district relief. This is vividly illustrated by the following language from its opinion.

". . . The power to disregard such artificial barriers is all the more clear where, as here, the State has been guilty of discrimination which had the effect of creating and maintaining racial segregation along school district lines. See Section III B, pp. 42-48, *supra.* [Citations omitted]" (172a).

However, as previously demonstrated in this brief, such language is without any foundation in this cause. There have been no allegations, proofs or findings with respect to manipulating school district boundaries for segregatory purposes. There have been no allegations, proofs or findings with respect to de jure conduct by any school district other than Detroit. Alleged inter-district disparities

in school finance among school districts give rise to no constitutional violation. *Rodriguez, supra.* The former Carver School District area has been a part of the Oak Park School District since 1960. (169a). The state school aid urban-rural categorical transportation reimbursement provisions apply to both black and white students alike in Detroit and other school districts in the tri-county area on the basis of residence within or without city boundaries for the purpose of intra-district transportation. (93a). Section 12 of 1969 PA 244, as added by 1970 PA 48, *supra,* related to a racial balance plan limited to 12 of Detroit's 21 high schools. 433 F2d 897, *supra,* at 898. Thus, it is manifest that the defendants Milliken, et al, have not committed de jure acts with the purpose and present causal effect of separating school children by race between Detroit and the other school districts in the tri-county area. *Keyes, supra,* 93 S Ct, at 2697-2699.

The one remaining aspect of these defendants' conduct involves site location for school construction, which has been discussed above. As shown above, the record does not support any notion of a multi-district construction violation by these defendants. Rather, what this case demonstrates is the "familiar phenomenon that in metropolitan areas minority groups are often found concentrated in one part of the city." *Swann, supra,* 402 US, at 25. Or, as stated in the concurring opinion of Mr. Justice Powell in *Keyes, supra,* 93 S Ct, at 2704, ". . . the familiar root cause of segregated schools in *all* the biracial metropolitan areas of our country is essentially the same: one of segregated residential and migratory patterns. . ."

Turning to the instant cause, it is demonstrable that in 1940, some 98 years after the boundaries of the city and school district of Detroit had been made coterminous by Section 1 of 1842 PA 70, the City of Detroit was approximately 10% black. By 1970, the same city was approximately 45% black. (52aa). (21a). Thus, it is beyond dispute that school district boundary lines were not manipulated and superimposed upon changing demographic patterns. Rather, changing racial demographic patterns have been superimposed upon school district boundary lines of long standing.

As recognized by a unanimous Court in *Swann, supra*, 402 US, at 31-32:

> "It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary."

Thus, where, as here, the record does not show that the defendants or any other agency of the State has purposely fixed or altered demographic patterns to affect racial compositions in the schools as between Detroit and the other 85 school districts in the tri-county area, there is simply no basis for multi-school district relief.

Finally, as set forth in *Swann, supra*:

> ". . . The target of the cases from *Brown I* to the present was the dual school system. The elimination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. . . . 402 US, at 22.
>
> "Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools." 402 US, at 23.

Consequently, it is clear that changing racial demographic patterns over the past 30 odd years in the tri-county area, which reflect a

national phenomenon not unique to Wayne, Oakland and Macomb counties, cannot, without more, constitute a constitutional violation. There is simply no basis in fact or law for concluding that the conduct of the defendants Milliken, et al, herein serves as a valid basis for imposing multi-district relief.

E. The multi-district relief decreed below is for the sole purpose of racial balance within a tri-county area.

The decisions of this Court make it unequivocally clear that racial balance within or between school districts is not constitutionally required. The Equal Protection Clause, unlike other constitutional provisions, neither confers substantive rights nor creates substantive liberties. Its function is limited to measuring the validity of classifications created by state law. *Rodriguez, supra,* 411 US, at 59, concurring opinion of Mr. Justice Stewart.

Further, in *Swann, supra,* this Court squarely ruled:

> "... If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." 402 US, at 24.

Moreover, in *Emporia, supra,* 407 US, at 464, the majority, in enjoining the carving out of a new school district from an existing school district that had not yet finished dismantling its dual school system, plainly stated:

> "We need not and do not hold that this disparity in the racial composition of the two systems would be a sufficient reason, standing alone, to enjoin the creation of the separate school district. The fact that a school board's desegregation plan leaves some disparity in racial balance among various schools in the system does not alone make that plan unacceptable. [Footnote omitted] We observed in *Swann, supra,* that '[t]he constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.' 402 U.S., at 24."

The dissent in *Emporia, supra,* representing the views of four justices, registered its rejection of racial balance as a predicate for federal judicial intervention in the following language:

> "If the severance of the two systems were permitted to proceed, the assignment of children to schools would depend solely on their residence. County residents would attend county schools, and city residents would attend city schools. Assignment to schools would in no sense depend on race. Such a geographic assignment pattern is prima facie consistent with the Equal Protection Clause. See *Spencer* v. *Kugler,* 326 F. Supp. 1235 (N. J. 1971), aff'd, 404 U. S. 1027 (1972)." 407 US, at 471-472.

***

> "It can be no more be said that racial balance is the norm to be sought, than it can be said that mere racial imbalance was the condition requiring a judicial remedy. . . . Since the goal is to dismantle dual school systems rather than to reproduce in each classroom a microcosmic reflection of the racial proportions of a given geographical area, there is no basis for saying that a plan providing a uniform racial balance is more effective or constitutionally preferred. School authorities may wish to pursue that goal as a matter of policy, but we have made it plain that it is not constitutionally mandated. See *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U. S., at 16." 407 US, at 473-474.

Thus, the teaching of *Emporia, supra,* is that mere disparities in racial ratios between school systems is not a legally sufficient reason for enjoining the creation of a new school district. Given this, the reassignment of pupils across school district and county lines decreed herein for racial balance purposes cannot withstand judicial scrutiny.

An examination of the proceedings in this cause will demonstrate that the multi-district relief mandated below is for the purpose of racial balance, pure and simple, in contravention of the precedents of this Court. On cross-examination, plaintiffs' expert witness testified concerning the formulation of plaintiffs' proposed multi-district plan as follows:

"Q. All right. I wasn't very good at mathematics in school, I probably won't be very good at them today, Doctor, but let me ask you this:

Basically, as I understand your testimony, you came to Detroit yesterday and you sat and got down to work and you worked out a plan which has as its primary predicate achieving a 25.3 percent racial balance within the metropolitan area, consistent with what you consider to be reasonable travel time. Isn't that about it?

A. Not quite, no, sir.

Q. Pardon?

A. Not quite, no, sir.

Q. All right, what other factors, then, did you take into account?

A. Well, it isn't simply a question of other factors, but I think you misstated my premise. My intent was not to achieve balance but to minimize disproportion from the normative figure. And I think there is a difference and a distinction between the two statements.

Q. All right. Well, let's not get into an argument over semantics, let's see if we can word it another way then:

[1241] What you tried to do was come as close, looking at your exhibit and from your previous testimony, is to try to come as close as possible to achieving what I believe you described as a norm of 25 percent plus or minus 5 percent in each cluster, so that you would have a mix of 75, roughly 75 percent white, 25 percent black, give or take 5 percent?

A. Well, again, it's semantics but it's more a problem of not straying too far from the norm, than it is trying to come as close as possible. It's a subtle distinction but I think a very important one.

Q. Well, whether it's not to stray too far or come as close, the norm was 25.3 percent; is that right?

A. Yes.

Q. And then the idea of the plan was not to try to stray from that norm, and you come up with a plan that would permit you to do that?

A. That's right." (IVa249-IVa250).

Further, an examination of PX P.M. 12, plaintiffs' proposal, reveals that plaintiffs' expert rigorously adhered to his norm of 25.3% black, plus or minus 5%, in that the clusters range in per cent black from a low of 20.5% black in cluster 13 to a high of 30.8% black in cluster 7. (PX P.M. 12, Va111-Va115). Thus, it may only be concluded that plaintiffs' multi-district proposal was formulated on a fixed normative figure of 25.3% black with only minor deviations therefrom being tolerated.

An examination of the Ruling on Desegregation, June 14, 1972, makes the purpose and intent of the District Court crystal clear.

> "Pupil reassignment *to accomplish the desegregation of the Detroit public schools* is required within the geographical area which may be described as encompassing the following school districts (see Exhibit P.M. 12), and hereinafter referred to as the 'desegregation area' ": (Emphasis supplied)
>
> (53 school districts are described by name, including Ecorse, Hamtramck, Highland Park, Inkster, River Rouge, Westwood, among others) (101a).
>
> "Within the limitations of reasonable travel time and distance factors, pupil reassignments shall be effected within the clusters described in Exhibit P.M. 12 so as to achieve the greatest degree of actual desegregation to the end that, upon implementation, no school, grade or classroom be substantially disproportionate to the overall pupil racial composition." (101a-102a).

PX P.M. 12 (Va111-Va115) shows that the racial makeup of pupils in the "desegregation area" is approximately 75% white and 25% black. It also indicates the following:

Ecorse	50.8% black pupils
Hamtramck	28.7% black pupils
Highland Park	85.1% black pupils
Inkster	88.0% black pupils

River Rouge	43.2% black pupils
Westwood	39.9% black pupils

If the true purpose and intent of the District Court's desegregation area is "to accomplish the desegregation of the Detroit public schools", the transporting of white pupils from Highland Park into Detroit will only leave Highland Park with proportionately more black students. The same can be said of Inkster, Ecorse, River Rouge, Westwood and Hamtramck so that each district would contain much more than an average 25% black pupils for the desegregation area. The truth is that when these districts were made part of the "desegregation area", there could be no intent to transport white pupils from any of these school districts into Detroit. Rather, the clear purpose was to transport black children from each of these districts into predominantly white school districts in order to reach the 75% white and 25% black configuration for the desegregation area. This is amply borne out by examining the clusters in PX P.M. 12. (Val11-Val15).

"District Cluster 6	*Total Students*	*Total Black Students*	*Percent Black Students*
Birmingham	16,912	7	.0
Hazel Park	7,868	1	.0
Highland Park	7,708	6,556	85.1
Royal Oak	18,583	5	.0
Detroit Murray	9,564	7,042	73.6
	60,635	13,611	22.4"

(Val11-Val15).

It is demonstrable that in order to achieve an approximate population of 75% white and 25% black in Cluster 6, black pupils from Highland Park and Detroit Murray will be transported to Birmingham, Hazel Park and Royal Oak, while white pupils from Birmingham, Hazel Park and Royal Oak will be transported to Highland Park and Detroit Murray. There will be no movement of pupils between Highland Park and Detroit Murray. Thus, it cannot be said that the pupils in Highland Park, white or black, must be reassigned "to accomplish the desegregation of the Detroit Public Schools." What must be said, and it is the only conclusion

possible, that the inclusion of Highland Park within the "desegregation area" as a part of Cluster 6 will serve to racially balance pupils in the Birmingham, Hazel Park, Royal Oak, and Highland Park school districts as well as in the Detroit Murray constellation.

Examination of the inclusion of Inkster and Westwood within the "desegregation area" is even more conclusive.

"District Cluster 12	*Total Students*	*Total Black Students*	*Percent Black Students*
Cherry Hill	4,627	16	.3
Inkster	4,311	3,795	88.0
Wayne	23,218	30	.1
Westwood	4,961	1,980	39.9
Detroit Chadsey plus Cadillac JHS 1/5 Cooley	5,998	2,053	
	4,250	2,526	44.7
	43,420	10,400	22.0"

(Va111-Va115).

How the inclusion of the Inkster and Westwood school districts can help to desegregate the Detroit Chadsey and remaining identified Detroit schools is beyond our imagination. The Detroit school constellations are less than 50% black. Inkster is 88% black and Westwood is 40% black. In order to achieve the mix of 75% white and 25% black in Cluster 12, black pupils from not only the Detroit schools but Inkster and Westwood school districts will be transported to Cherry Hill and Wayne school districts, and white children from Cherry Hill and Wayne school districts will be transported not only to the Detroit schools but to Inkster and Westwood school districts. Thus, there can be no basis to conclude that the pupils in Inkster and Westwood are needed to desegregate the Detroit public schools.

A study of Cluster 14, involving River Rouge, and Cluster 13, involving Ecorse, compel the similar conclusion that neither school district is necessary to desegregate the Detroit public schools, but rather the District Court is applying a racial balance not only to

the Detroit public schools but the River Rouge and the Ecorse school districts as well.

Finally, brief reference should be made to the inclusion of the Hamtramck school district in the desegregation area as necessary to accomplish the desegregation of the Detroit public schools. Its black students represent 28.7% of its pupil population. Thus, this district is a little above the 75% white and 25% black pupil composition for the 53 district desegregation area. In order to meet this formula, it will be necessary to transport a limited number of black pupils out of Hamtramck but certainly not to the Detroit Pershing constellation. Obviously this transportation will be to Clawson, Lamphere, Madison Heights or Troy, thus assisting in small part at least in the desired racial balance in these five school districts but not the Detroit Pershing constellation.

It is recognized that the panel appointed by the District Court has recommended some adjustments in the various clusters but the suggested changes do not affect in one iota the inescapable conclusion that under the guise of accomplishing the desegregation of the Detroit public schools, the District Court has proceeded to order the racial balancing of the white and black pupil populations in a "desegregation area" within southeastern Michigan approximately matching the total population of white and black pupils in this large geographical area.

The point is further illustrated by the Ruling on Desegregation Area, June 14, 1972, as follows:

> "Provided, however, that if in the actual assignment of pupils it appears necessary and feasible to achieve effective and complete racial desegregation to reassign pupils of another district or other districts, the desegregation panel may, upon notice to the parties, apply to the Court for an appropriate modification of this order." (101a).

The panel in effect is given the prerogative to racially balance an unlimited area, subject only to it being "feasible."

The "social goal" to be attained "through the educational system, by using law as a lever" had been achieved. (41a). This social goal is to minimize the proportion of black

students in the public schools. Stated another way, the social goal is racial balance. [16]

To summarize, in the formulation and imposition of multi-district relief herein, the goal was not a unitary system of schools in which no pupil of a racial minority is excluded from any school on the basis of race. Rather, the goal sought and achieved was a particular degree of racial balance as a matter of substantive constitutional right in contravention of *Swann, supra*, 402 US, at 23-24.

F. The attempt by the appellate majority to distinguish *Bradley* v *Richmond* is patently erroneous.

The appellate majority attempts to distinguish *Bradley* v *Richmond, supra,* on several grounds. (175a). It is respectfully submitted that, upon careful scrutiny, each alleged ground of distinction is manifestly untenable.

First, a distinction is set forth on the ground that here, unlike the *Richmond* case, there is no order for restructuring of school districts but merely pupil reassignment among school districts. This erroneous statement is not in accord with the record herein. The District Court's order of June 14, 1972 commands, inter alia, the following:

> "The State Superintendent of Public Instruction, with the assistance of the other state defendants, shall examine, and make recommendations, consistent with the principles established above, for appropriate interim and final

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[16] Although the trial court, based on 30 specific findings, found no de jure faculty segregation within Detroit, (28a-32a), nevertheless it ordered "... assignment of no less than 10% black faculty and staff at each school, and where there is more than one building administrator, every effort should be made to assign a bi-racial administrative team." (102a-103a). Thus, in the absence of any finding of a constitutional violation as to faculty, teachers within the desegregation area having lawful contracts with boards of education covering wages, hours and conditions of employment are now subject to judicial reassignment in school districts governed by other boards of education with whom they have no contractual relationship. See section 569 of the School Code of 1955, *supra*, MCLA 340.569; MSA 15.3569, and 1947 PA 336, as amended, MCLA 423.201 *et seq.*; MSA 17.455(1) *et seq.* (46aa, 76aa). This is patently a racial quota system to achieve racial balance.

arrangements for the (1) financial, (2) administrative and school governance, and (3) contractual arrangements for the operation of the schools within the desegregation area, including steps for unifying, or otherwise making uniform the personnel policies, procedures, contracts, and property arrangements of the various school districts.

***

"In his examination and recommendations, the Superintendent, consistent with the rulings and orders of this court, may be guided, but not limited, by existing state law; where state law provides a convenient and adequate framework for interim or ultimate relief, it should be followed, where state law either is silent or conflicts with what is necessary to achieve the objectives of this order, the Superintendent shall independently recommend what he deems necessary. In particular, the Superintendent shall examine and choose one appropriate interim arrangement to oversee the immediate implementation of a plan of desegregation." (104a-105a).

Further, the appellate majority itself states later in the opinion that "the Legislature of Michigan has an opportunity to determine the organizational and governmental structure of an enlarged desegregation area" for remedial purposes. (188a-189a). This language conclusively lays to rest any pretense that the multi-district remedy herein may be implemented among scores of legally, geographically and politically independent Michigan school districts, each having its own locally elected board of education with legal authority over matters of taxation, bonding, personnel and curriculum, without a traumatic restructuring of the existing organizational, financial and governmental structure of scores of school districts in Wayne, Oakland and Macomb counties. See, e.g., Part 1, Chapters 3 and 4 and relevant portions of Part 2, Chapter 9 of the School Code of 1955, *supra.* (8aa-30aa, 44aa-51aa).

Second, the appellate majority reasons that under the law of Virginia its State Board of Education, acting alone, could not have effected consolidation of the three school districts in question.

Bradley v *Richmond, supra*, 462 F 2d, at 1067. However, in Michigan, like Virginia, the State Board of Education lacks any power, acting alone, to effect school consolidations. Rather, school consolidations must be initiated locally by either boards of education or school electors and are subject to a vote of the people in each affected school district. See Part 2, Chapter 3 of the School Code of 1955, *supra*, dealing with consolidation of school districts. (35aa-43aa). Further, Detroit, as a first class school district, is not subject to the consolidation provisions of the statute. (35aa).

In Michigan, like Virginia, the power over school district boundaries is reposed in the legislature. Mich Const 1963, art 8, §2. *School District of the City of Lansing* v *State Board of Education, supra*, 367 Mich, at 596; 116 NW 2d, at 869; *Penn School District No. 7* v *Lewis Cass Intermediate School District Board of Education*, 14 Mich App 109, 120; 165 NW 2d 464, 470 (1968); *Airport Community Schools* v *State Board of Education*, 17 Mich App 574; 170 NW 2d 193 (1969); *Bradley* v *Richmond, supra*, 462 F 2d, at 1067. This is plainly recognized by the appellate majority herein in its statement that "the Legislature of Michigan has an opportunity to determine the organizational and governmental structure of an enlarged desegregation area" for purposes of remedy. (188a-189a). Indeed, the decision as to whether to accept nonresident tuition pupils is reposed solely in local boards of education. *Jones* v *Grand Ledge Public Schools, supra*.

In addition, the appellate majority correctly recognizes that, in the alteration of school district boundaries, the State Board of Education acts only within the limits of statutes enacted by the legislature. However, the appellate majority misreads such statutes and mischaracterizes the conduct of the State Board of Education under such statutes.

For example, the appellate majority states:

"2. Public Act 289 of 1964 (MSA § 15.2299(1) *et seq.*, MCLA § 388.681 *et seq.*) required Michigan school districts to operate K-12 systems. . . ."

"3. Pursuant to Act 289 of 1964, *supra*, the State Board of Education ordered the merger of the Brownstown No. 10, Hand, Maple Grove and Carson school districts, all in Wayne County. . . ." (168a).

A careful reading of this statute reveals that it made the elimination of non-high school districts contingent upon local elections and, although the statute has expired by its own terms, there are approximately 70 non-high school districts still remaining in Michigan. See 1964 PA 289, § 7. (62aa-63aa). Further, the statute by-passed the State Board of Education altogether in the reorganization process, relying instead upon an appointed state committee for the reorganization of school districts with the Superintendent of Public Instruction serving as its nonvoting chairman. See 1964 PA 289, § 2 (59aa) and *Penn School District No. 7* v *Lewis Cass Intermediate School District Board of Education, supra*, 14 Mich App, at 121, 165 NW 2d, at 470-471. Thus, contrary to the appellate majority, the State Board of Education did not order the merger of any school districts under 1964 PA 289, *supra*. (58aa-64aa).

The appellate majority also refer to actions of the State Board of Education taken under 1967 PA 239, as amended, MCLA 388.711 *et seq*; MSA 15.2299(51) *et seq*, concerning the reorganization of school districts. (168a). (64aa-68aa). However, under such statute, the reorganization process had to be initiated locally and the State Board of Education could act only after a finding of an emergency warranting school district reorganization by the state committee for the reorganization of school districts. See Sections 1, 2 and 5 of such statute. (65aa, 66aa).

Finally, contrary to the intimations of the Sixth Circuit majority, in Michigan, like Virginia, local boards of education possess the authority, by statute, to operate the public schools within their respective school district boundaries. See Mich Const 1963, art 8, § 2; the School Code of 1955, *supra*, (3aa, 6aa-51aa); *Senghas* v *L'Anse Creuse Public Schools, supra*, 368 Mich, at 560; 118 NW 2d, at 977. *Hiers* v *Detroit Superintendent of Schools, supra*, 376 Mich, at 235; 136 NW 2d, at 15. *Munro* v *Elk Rapids Schools*, 383 Mich 661, 674; 178 NW 2d 450, 455 (1970), on reh 385 Mich 618; 189 NW 2d 224 (1971). In summary, *Bradley* v

Richmond, supra, is not distinguishable except in the result reached.

In essence, the Fourth Circuit ruled that, absent proof of purposeful segregation in the establishment and maintenance of school district boundaries, a multi-district remedy was beyond the scope of federal judicial power under the Constitution. *Bradley* v *Richmond, supra,* 462 F 2d, at 1060. The Sixth Circuit ruled that, notwithstanding the absence of any pleaded allegations, proofs or findings of purposeful segregation in the establishment and maintenance of school district boundaries, nevertheless a multi-district remedy is constitutionally permissible, and required herein, for the sole purpose of achieving racial balance within a three county area.

In Michigan, there is no history of dual school systems by mandate of state law. Since at least 1869, some 27 years before *Plessy* v *Ferguson,* 163 US 537; 16 S Ct 1138; 41 L Ed 256 (1896), the positive law of Michigan has prohibited racially dual school systems. *The People, ex rel Workman* v *Board of Education of Detroit, supra.* Section 355 of the School Code of 1955, *supra,* MCLA 340.355; MSA 15.3355, and Mich Const 1963, art 8, § 2. (35aa, 3aa). Further, there has always been pupil integration in fact in the public schools. (157a). The ruling of the Federal District Court in *Higgins* v *Board of Education of the City of Grand Rapids, Michigan, supra,* against the plaintiffs on the issue of pupil segregation also attests to this fact. *Mason* v *Board of Education of the School District of the City of Flint,* 6 Mich App 364; 149 NW 2d 239 (1967). It is respectfully submitted that the result in Michigan should be the same result reached in Virginia.

G. This Court has consistently recognized both the importance of local control over public education and the integrity of local political subdivisions.

In *Emporia, supra,* the majority opinion, 407 US, at 469, and the dissenting opinion, 407 US, at 478, recognized respectively, the strong desire of parents for direct control over decisions vitally affecting their children and the importance of local control from an educational standpoint and for continuing public support of the public schools. Further, here, unlike *Emporia, supra,* 407 US,

at 469, the citizens of the school districts to be affected outside Detroit have heretofore always exercised such local control.

Even the dissent in *Emporia* stated the following:

"The discretion of a district court is further limited where, as here, it deals with totally separate political entities. This is a very different case from one where a school board proposes attendance zones within a single school district or even one where a school district is newly formed within a county unit. Under Virginia law, Emporia is as independent from Greensville County as one State is from another. . . ." 407 US, at 478.

Under Michigan law the school districts involved herein are legally, politically and geographically independent from each other. See Section 352 of the School Code of 1955, *supra*, and (176a-177a). (34aa-35aa).

In *Rodriguez, supra*, 411 US, at 49-50, this Court reiterated the importance of local control over public education. Indeed, local participation and control over public education was found to be a rational state interest sufficient to justify large inter-district financial disparities. *Rodriguez, supra*, 411 US, at 55.

Moreover, in *Rodriguez, supra*, 411 US, at 54, this Court recognized that "the very existence of identifiable local governmental units – requires the establishment of jurisdictional boundaries that are inevitably arbitrary" and stated that "[t]his Court has never doubted the propriety of maintaining political subdivisions within the States and has never found in the Equal Protection Clause any *per se* rule of 'territorial uniformity.' . . ." 411 US, at 54, fn 110. This is directly at odds with the approach of the appellate majority that school district boundary lines are mere "artificial barriers" to be ignored in the judicial quest for territorial racial balance over a three-county area. (172a). Further, nothing is as "artificial" as the 53 school district desegregation area decreed below which geographically does not correspond to any other existing governmental unit but, rather, is judicially invented for the sole purpose of racial balance.

In the language of *Keyes, supra*, 93 S Ct, at 2695, the school districts involved herein are legally, politically and geographically

"separate, identifiable and unrelated units" within the State of Michigan. As demonstrated above, both lower courts herein have recognized the need for restructuring these governmental units if a multi-district remedy is to be effectuated in this cause. Otherwise, parents would be voting on school board candidates and school tax rate proposals in the district where they reside, while their school age children would be educated in another school district where the parents would be denied any effective control over school board members, school tax rates, and critical decisions affecting educational personnel and curriculum. The cross-district reassignment of pupils for purposes of racial balance, without more, would completely vitiate any concept of parental control over the education of their children.

Education is not among the rights afforded either explicit or implicit protection under the Federal Constitution. *Rodriguez, supra*, 411 US, at 35. Thus, while not disparaging the importance of public education, it is important to remember that education is a function entrusted to the states under our federal system of government. The Michigan legislature, in response to the state constitutional directive to establish and maintain a system of free public elementary and secondary education (Mich Const 1963, art 8, § 2), has enacted the provisions of the School Code of 1955, *supra*, (3aa, 6aa-51aa). Pursuant to this statutory enactment, local participation and control over public education is encouraged and facilitated through local school districts and locally elected school boards with broad discretionary authority. As stated by this Court in *Rodriguez, supra*, 411 US, at 50, "[a]n analogy to the Nation-State relationship in our federal system seems uniquely appropriate."

In addition, as cogently expressed in the opinion of Mr. Justice Powell in *Keyes, supra:*

> "Neighborhood school systems, neutrally administered, reflect the deeply felt desire of citizens for a sense of community in their public education. Public schools have been a traditional source of strength to our Nation, and that strength may derive in part from the identification of many schools with the personal features of the surrounding neighborhood. Community support, interest and dedication to public schools may well run higher with a neighborhood

attendance pattern: distance may encourage disinterest. Many citizens sense today a decline in the intimacy of our institutions – home, church, and school – which has caused a concomitant decline in the unity and communal spirit of our people. I pass no judgment on this viewpoint, but I do believe that this Court should be wary of compelling in the name of constitutional law what may seem to many a dissolution in the traditional, more personal fabric of their public schools." 93 S Ct, at 2716.

To summarize, the school districts in the tri-county area, with their locally elected boards of education which facilitate local participation and control over public education, are independent local political subdivisions that, based on the record in this case and the controlling precedents of this Court, should be left intact to educate their own resident children. *Emporia, supra, Rodriguez, supra.*

H. The multi-district remedy herein will require excessive expenditures for acquiring, housing, maintaining and operating school buses to effectuate racial balance throughout the tri-county area.

In the opinion of Mr. Justice Powell in *Keyes, supra*, 93 S Ct, at 2717, it is noted that the costs of court ordered transportation, running into the millions of dollars, impose severe economic burdens at a time when the public schools are undergoing serious financial difficulties. This sound observation is squarely applicable to the instant cause.

The trial court stated that "at least . . . 350 buses" must be purchased for a multi-district remedy. (74a). At a cost of approximately $10,000.00 per bus, (IVa18), the initial capital outlay required is, at a minimum, approximately $3,500,000.00.

In addition, the trial court ruled that 310,000 pupils will be transported at a per pupil cost which "should be no greater than

50 to 60 dollars." [17] (72a-73a). Using $55.00 as the per pupil cost, the annual operating cost will be approximately $17,050,000.00 for multi-district transportation. In addition, by the time such multi-district remedy might be implemented, this figure will have increased considerably due to salary increases necessitated by inflation and the rapidly rising cost of gasoline due to the energy crisis.

The additional costs of transporting pupils for a multi-district remedy come at a time when the annual outlay for public education in Michigan is reaching new massive proportions. For example, in 1972-73 the legislature appropriated $1,111,268,015.00 in state school aid for public elementary and secondary education. For the 1973-74 school fiscal year, the legislature has appropriated approximately $1,235,739,500.00 for public elementary and secondary education, an increase of $124,471,485.00. This increase is largely due to an increase of $34,000,000.00 for special education programs for handicapped children and the $56,500,000.00 increase required to guarantee each school district, in combined local and state aid funds, $38.00 per pupil for each mill of operating tax levy up to 22 mills in the first year of a three year program designed to make each school district's revenues primarily a function of local willingness to vote operating tax levies without regard to the wealth or state equalized valuation of taxable property per pupil within each school district. See Section 51 of 1972 PA 258 and the same section, as amended by 1973 PA 101, and Section 21(1) of 1972 PA 258, as amended by 1973 PA 101, being, respectively, MCLA 388.1151; MSA 15.1919(551) and MCLA 388.1121; MSA 15.1919(521). (75aa, 76aa, 74aa). These substantial increases are based upon tax revenues from a healthy economy which, with the energy crisis

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[17] The trial court indicated that approximately 300,000 pupils in the tri-county area are transported by bus and that, within the desegregation area, 310,000 pupils will be transported for desegregation purposes. Here, it must be emphasized that the tri-county area includes 33 school districts not included within the desegregation area. Further, these school districts, being farther away from the more densely populated area of Detroit and environs, have a disproportionately greater incidence of transporting pupils to school. (72a, 60a, 101a, Va 14). Finally, it must also be remembered that substantial numbers of additional children within the desegregation area will continue to be transported intra-district to the school nearest their home.

and disruption of the automobile industry, may not materialize. The added costs of multi-district transportation for racial balance purposes are, indeed, unjustified.

If the increased costs of multi-district transportation are absorbed by the local school districts through their property tax revenues, this means either a reduction in their existing educational programs or an increase in voted school operating millage. See Mich Const 1963, art 9, § 6 which imposes a 15 mill limitation for county, township and school district purposes which may be exceeded by vote of the electors in the respective units of government. (4aa-5aa). It is highly unlikely that the voters in the affected school districts will approve such tax increases to send their children to school in another school district, where they have no vote in school board elections, while children from other districts are transported into their districts to use the schools they either have paid for or are still paying for in terms of the property taxes levied to retire outstanding bonded debt. In summary, the financial burden of multi-district transportation for the sole purpose of racial balance over a tri-county area is clearly excessive. The limited funds and resources available for public education are far better spent in educating children than in transporting children out of their school districts to other school districts for racial balance.

I. The lower courts denied fundamental due process to the affected school districts other than Detroit.

The rulings of the lower courts herein concerning a multi-district remedy deny due process to the affected school districts outside Detroit in the judicial quest for racial balance. (See dissenting opinions of Judge Weick, 205a-212a; Judge Kent, 230a-238a; Judge Miller, 239a-240a). Under Michigan law, Michigan school districts may sue and be sued. Further, each board of education has the right to hire local counsel of its own choosing. See §§ 352 and 609 of the School Code of 1955, *supra*, MCLA 340.352, MCLA 340.609; MSA 15.3352, 15.3609 (34aa, 35aa, 50aa). Moreover, it has been the consistent position and conduct of these defendants throughout this litigation that they do not represent any of the school districts involved in this cause. The false notion that the interests of defendants and local school

districts are as one, and thus may be effectively represented by just defendants Milliken, et al, is surely put to rest by the decision of defendant Detroit Board of Education to accept the de jure findings against it and support a multi-district remedy in an attempt to avoid a unitary system with majority black schools.

On this point, the majority opinion of the Court of Appeals is manifestly inconsistent and illogical. Such opinion recognizes the independent legal status of Michigan school districts for purposes of remedial housekeeping, but on the crucial issues of violation and remedy within Detroit and the propriety of a multi-district remedy, this independent legal status is completely ignored. (176a-178a). The holding that each "affected district first must be made a party to this litigation and afforded an opportunity to be heard" (177a), is without substance since the opportunity to be heard is available only after the decisive issues have already been adversely determined.

For the school districts affected herein and their boards of education, the interest at stake is their continued existence as viable governmental entities. To paraphrase the language of the dissenting opinion in *Emporia, supra,* 407 US, at 478, to bar these school districts from operating their own school systems for the children within their respective geographical boundaries is to strip them of their only governmental responsibility and to deny them any existence as independent governmental entities, all without their day in court. Further, unlike *Emporia, supra,* this case involves existing school districts outside the geographical area of the school system previously found to be de jure segregated.

For the parents of school age children within these school districts, the interest at stake is the parental right to direct the upbringing and education of children under their responsibility and control. *Pierce* v *Society of Sisters,* 268 US 510; 45 S Ct 571; 69 L Ed 1070 (1925). *Wisconsin* v *Yoder,* 406 US 205; 92 S Ct 1526; 32 L Ed 2d 15 (1972). This paramount parental interest, which limits the scope of state power over public education, is also clearly entitled to recognition in terms of the power of federal courts over public education for purposes of racial balance. At a minimum, such parents are entitled to be heard, through their

locally elected boards of education, at a meaningful stage in the proceedings. After all, as cogently noted by Mr. Justice Powell in *Keyes, supra,* 93 S Ct, at 2717, 2718, the compulsory transportation of any child to a distant school solely for racial balance purposes impinges upon the liberty of that child and it is the parents and children who shoulder the full burden of affirmative remedial action in these cases, although they did not participate in any constitutional violation.

IV.

CONCLUSION

The lower courts have predicated their decisions upon alleged conduct of defendants Milliken, et al, which purportedly results in de jure segregation of the Detroit school system. Using this predicate the lower courts have prescribed the social goal of a multi-school district which has a majority of white students, and is racially balanced over a three-county area, as a remedy. Close scrutiny of the conduct of defendants Milliken, et al, reveals no basis for the holding that their conduct resulted in de jure segregation either within Detroit or between Detroit and the other 85 school districts in the tri-county area.

Patently, a unitary system of schools can be achieved within the Detroit public schools, albeit a majority black unitary school system. Unless this Court is to abandon the principles of racial equality it has enunciated from *Brown, supra,* to the present, and hold that majority black school systems are somehow intrinsically inferior to school systems with white majorities, it must be concluded that a Detroit-Only plan of desegregation satisfies constitutional requirements.

The sweeping, novel and unprecedented multi-school district remedial decrees entered below, compelling massive reassignment and transportation of pupils across school district and county lines solely for racial balance purposes, are not based upon any unconstitutional violation as a predicate for such judicially imposed multi-school district relief. In the absence of a constitutional violation, there is simply no basis for the judicial restructuring of scores of legally, politically and geographically

independent school districts throughout the tri-county area of Wayne, Oakland and Macomb counties. Such action is manifestly beyond the "limits" of federal judicial power. *Swann, supra*, 402 US, at 28.

WHEREFORE, these petitioners respectfully request that this Court reverse the opinion and judgment of the Sixth Circuit Court of Appeals herein and hold that, based on the record in this cause, the defendants, Milliken, Kelley, Porter, Green and the Michigan State Board of Education, have not committed acts resulting in de jure segregation, that a constitutional, unitary system of schools may be established within the Detroit school district, that a multi-school district remedy is constitutionally impermissible in this cause and order this cause dismissed as to these petitioners.

Respectfully submitted,

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CONSTITUTION OF 1908

ARTICLE XI.
EDUCATION.

Superintendent of public instruction; election; term; duties; compensation.

Sec. 2. A superintendent of public instruction shall be elected at the regular election to be held on the first Monday in April, nineteen hundred nine, and every second year thereafter. He shall hold office for a period of two years from the first day of July following his election and until his successor is elected and qualified. He shall have general supervision of public instruction in the state. He shall be a member and secretary of the state board of education. He shall be ex-officio a member of all other boards having control of public instruction in any state institution, with the right to speak but not to vote. His duties and compensation shall be prescribed by law.

HISTORY: See Const. 1850, 13, 1; S. L. 9, 1.

STATE BOARD OF EDUCATION: See Sec. 6, Art. XI of this constitution.

CONSTITUTION OF MICHIGAN OF 1963

ARTICLE 4
Legislative Branch

General appropriation bills; priority, statement of estimated revenue.

Sec. 31. The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an itemized statment of estimated revenue by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the general appropriation bills as passed.

HISTORY: New Section.

Bills passed; approval by governor or veto, reconsideration by legislature.

Sec. 33. Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves, and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, to the house in which it originated. That house shall enter such objections in full in its journal and reconsider the bill. If two-thirds of the members elected to and serving in that house pass the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house. The vote of each house shall be entered in the journal with the votes and names of the members voting thereon. If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it.

HISTORY: See Const. 1909, V, 38.

ARTICLE 5
Executive Branch

Disapproval of items in appropriation bills.

Sec. 19. The governor may disapprove any distinct item or items appropriating moneys in any appropriation bill. The part or parts approved shall become law, and the item or items disapproved shall be void unless re-passed according to the method prescribed for the passage of other bills over the executive veto.

HISTORY: See Const. 1908, V, 37.

Civil rights commission; members, term, duties, appropriation.

Sec. 29. There is hereby established a civil rights commission which shall consist of eight persons, not more than four of whom shall be members of the same political party, who shall be appointed by the governor, by and with the advice and consent of the senate, for four-year terms not more than two of which shall expire in the same year. It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination. The legislature shall provide an annual appropriation for the effective operation of the commission.

Rules and regulations; hearings, orders.

The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures, to hold hearings, administer oaths, through court authorization to require the attendance of witnesses and the submission of records, to take testimony, and to issue appropriate orders. The commission shall have other powers provided by law to carry out its purposes. Nothing contained in this section shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state.

Appeals.

Appeals from final orders of the commission, including cease and desist orders and refusals to issue complaints, shall be tried de novo before the circuit court having jurisdiction provided by law.

HISTORY: New Section.

ARTICLE 8
Education

ree public elementary and secondary schools; discrimination.

Sec. 2. The legislature shall maintain and support a system of free public elementary nd secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national rigin.

Nonpublic schools, prohibited aid.

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, re-elementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or roperty shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location r institution where instruction is offered in whole or in part to such nonpublic school tudents. The legislature may provide for the transportation of students to and from ny school.

HISTORY: Am. proposed by initiative petition, ratified at general election on Nov. 3, 1970. See Const. 1908, XI, 9. Invalid provision, see p. 50.

tate board of education; duties.

Sec. 3. Leadership and general supervision over all public education, including adult ducation and instructional programs in state institutions, except as to institutions of igher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public educa-

State board of education; duties.

Sec. 3. Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

Superintendent of public instruction; appointment, powers, duties.

The state board of education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the board without the right to vote, and shall be responsible for the execution of its policies. He shall be the principal executive officer of a state department of education which shall have powers and duties provided by law.

State board of education; members, nomination, election, term.

The state board of education shall consist of eight members who shall be nominated by party conventions and elected at large for terms of eight years as prescribed by law. The governor shall fill any vacancy by appointment for the unexpired term. The governor shall be ex-officio a member of the state board of education without the right to vote.

Boards of institutions of higher education, limitation.

The power of the boards of institutions of higher education provided in this constitution to supervise their respective institutions and control and direct the expenditure of the institutions' funds shall not be limited by this section.

HISTORY: See Const. 1908, XI, § 6.

ARTICLE 9
Finance and Taxation

15 mill limitation.

Sec. 6. Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question.

Nonapplication of limitation.

The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidences of indebtedness or for the payment of assessments or contract obligations in anticipation of which bonds are issued, which taxes may be imposed without limitation as to rate or amount; or to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law.

School districts in 2 or more counties.

In any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district.

HISTORY: See Const. 1908, X, 21.

State school aid fund, source and distribution.

Sec. 11. There shall be established a state school aid fund which shall be used exclusively for aid to school districts, higher education and school employees' retirement systems, as provided by law. One-half of all taxes imposed on retailers on taxable sales at retail of tangible personal property, and other tax revenues provided by law, shall be dedicated to this fund. Payments from this fund shall be made in full on a scheduled basis, as provided by law.

HISTORY: New Section.

Payments from state treasury.

Sec. 17. No money shall be paid out of the state treasury except in pursuance of appropriations made by law.

HISTORY: See Const. 1908, X, 18.



Act 269, 1955, p. 475; Eff. Jul. 1.

AN ACT to provide a system of public instruction and primary schools; to provide for the classification, organization, regulation and maintenance of schools and school districts; to prescribe their rights, powers, duties and privileges; to provide for registration of school districts, and to prescribe powers and duties with respect thereto; to provide for and prescribe the powers and duties of certain boards and officials; to prescribe penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

PART 1.

CHAPTER 1.

CLASSIFICATION.

340.1 School code of 1955; short title.

Sec. 1. This act shall be known and may be cited as "The school code of 1955".

HISTORY: New 1955, p. 475, Act 269, Eff. Jul. 1.

CITED IN OTHER SECTIONS: Sections 340.1 to 340.984 are cited in §§ 388.850, 388.851, and 388.81.

340.2 School districts; organization.

Sec. 2. Hereafter, except as otherwise provided in this act, each and every school district shall be organized and conducted as:

1. A primary school district; or
2. A school district of the fourth class; or
3. A school district of the third class; or
4. A school district of the second class; or
5. A school district of the first class.

HISTORY: New 1955, p. 475, Act 269, Eff. Jul. 1.

340.3 Same; loss of organization, apportionment of territory. [M.S.A. 15.3003]

Sec. 3. Any school district shall lose its organization whenever there are not enough persons in such district qualified under the law to hold district offices or who will accept such offices. Upon the happening of either condition, the county board of education of the county containing the district shall declare by resolution such district dissolved and shall immediately attach the territory thereof, in whole or in part, to other districts already organized and make an equitable distribution of the money, property and other material belonging to such district among the districts to which the territory thereof shall be attached: Provided, That if the district extends into more than 1 county, the county boards of education of all such counties shall meet jointly and sit as a single board for the dissolution of such district.

§ 3, as amended by 1964 PA 176

340.3 School districts; disorganization, apportionment of territory, taxes.

Sec. 3. Any school district shall lose its organization whenever there are not enough persons in such district qualified under the law to hold district offices or who will accept such offices. Upon the happening of either condition, the county board of education of the county containing the district shall declare by resolution such district dissolved and shall immediately attach the territory thereof, in whole or in part, to other districts already organized and make an equitable distribution of the money, property and other material belonging to such district among the districts to which the territory thereof shall be attached. If the district extends into more than 1 county, the county boards of education of all such counties shall meet jointly and sit as a single board for the dissolution of such district. The property of the disorganized district shall be subject to any increase in the constitutional limitation on taxes which have been voted by the electors of the district to which it is attached, whether the voted increase is for building and site purposes, general fund purposes, or for the retirement of bonds except it shall receive a credit in the amount of any levy remaining to be paid on any outstanding debt in the disorganized district, which shall be paid until debt is retired and shall also pay an amount equal to the amount levied for debt retirement by the district to which it is attached not to exceed 5 mills on the state equalized valuation in the disorganized district. All other taxes levied for the purposes of the combined school district, including taxes for the retirement of bonded indebtedness, shall be spread over the entire area of the combined district.

Bonded indebtedness; board of trustees of receiving district; taxes; audit.

If any disorganized district has a bonded indebtedness the district shall be attached in whole to another district by the intermediate board of education. The identity of the district shall not be lost by virtue of the attachment, and its territory shall remain as a separate assessing unit for the purpose of the bonded indebtedness until the indebtedness has been retired or refunded. The board of the district to which the disorganized district is attached shall constitute the board of trustees for the disorganized district having the bonded indebtedness, and its officers shall be the officers for the disorganized district. The board of the district to which the disorganized district has been attached shall certify and order the levy of taxes for such bonded indebtedness in the name of the disorganized district, shall not commingle the debt retirement funds of the disorganized district with those of the district to which it has been attached, and shall do all things relative to the bonded indebtedness required by law and by the terms under which the issuance and sale of the bonds were originally authorized. All other taxes levied for the purposes of the combined school district, including taxes levied for the retirement of bonded indebtedness, shall be spread over the entire area of the combined district. Immediately upon the attachment of a disorganized district to another district the intermediate board shall audit the assets and liabilities of the disorganized district and if any considerable discrepancy is found the intermediate board shall order the receiving district to pay this discrepancy. The disorganized district shall repay from any moneys available including voted millage that amount in a time to be determined by the intermediate board.

HISTORY: New 1955, p. 475, Act 269, Eff. Jul. 1;—Am. 1964, p. 236, Act 176, Imd. Eff. May 19.

CHAPTER 3.

SCHOOL DISTRICTS OF THE FOURTH CLASS.

340.51 Fourth class districts; reclassification as graded, township or rur agricultural districts.

Sec. 51. Each school district organized as a graded, township or rural agricultur school district at the time of the taking effect of this act shall be a school district of th fourth class subject to reclassification as hereinafter provided, and shall operate and b governed as such by the provisions of this chapter and by such provisions of part 2 o this act as are not inconsistent with this chapter.

HISTORY: New 1955, p. 480, Act 269, Eff. Jul. 1.

340.52 Fourth class districts; reclassification in certain primary districts.

Sec. 52. Any primary school district having a school census of more than 75 and le than 2,400 children between the ages of 5 and 20 as certified by the superintendent public instruction, by a majority vote of the qualified voters present at an annual special meeting may organize as a fourth class school district.

HISTORY: New 1955, p. 480, Act 269, Eff. Jul. 1;—Am. 1959, p. 451, Act 271, Imd. Eff. Nov. 3.

340.53 Fourth class districts; referendum on reclassification in certain pr mary districts.

Sec. 53. In each primary district which shall hereafter have a school census of mo than 75 and less than 2,400 children between the ages of 5 and 20, as certified by th superintendent of public instruction, the question of organizing as a fourth class scho district may be submitted to the school electors thereof at an annual or special scho meeting following the attainment of such school census. The intention to submit th question of the organization of a fourth class school district shall be expressed in th notice of such annual or special meeting.

HISTORY: New 1955, p. 480, Act 269, Eff. Jul. 1;—Am. 1959, p. 452, Act 271, Imd. Eff. Nov. 3.

340.54 Fourth class districts; notice of reclassification.

Sec. 54. Whenever the electors of the district have by their vote approved the r classification of a primary district to a district of the fourth class, it shall be the duty the secretary of the board to give notice of such reclassification, in writing, to th county superintendent of schools of each county in which the district is situated and the superintendent of public instruction within 10 days after the vote thereon.

HISTORY: New 1955, p. 480, Act 269, Eff. Jul. 1.

340.55 Board of education; election, term, qualification, acceptance.

Sec. 55. When such change in the organization of the district shall have been voted, the voters at the next annual election or annual meeting shall proceed to elect by ballot a board of 5 members, 1 member for the term of 1 year, 2 for the term of 2 years, and 2 for the term of 3 years, and annually thereafter a successor or successors to the member or members whose terms of office shall expire. The term of office of a member of the board of any district governed by the provisions of this chapter shall be for 3 years, except in the case of the board elected at the first annual election or annual meeting following reclassification. Successors to the members whose terms expire shall be elected by the school electors of the district, by ballot, at each annual election or annual meeting. The board of the primary district shall continue to be the board for the district until the election and qualification of the new board at the first annual election or annual meeting following reclassification, and upon the qualification for and acceptance of office pursuant to section 493 of this act by 3 of the newly elected members, the district shall be deemed duly organized. After the annual election or annual meeting in 1960, the board of all fourth class school districts operating grades kindergarten through 12 shall consist of 7 members. At the annual election or annual meeting in 1960, the voters shall elect by ballot for a term of 4 years, 2 board members, and the voters shall elect by ballot for a term of 3 years successors to the members whose terms of office shall expire. At the annual election or annual meeting thereafter, the voters shall elect for a term of 4 years successors to the members whose terms shall expire. After the rotation is established, not more than 2 members shall be elected in any one year to fill vacancies occurring by expiration of terms.

HISTORY: New 1955, p. 481, Act 269, Eff. Jul. 1;—Am. 1959, p. 16, Act 16, Eff. Mar. 19, 1960.

340.55a Board of education; school meetings, adoption of election system, rescission, election of board members.

Sec. 55a. In school districts of the fourth class having a school census of less than 600 children there shall be held school meetings rather than school elections: Provided, That the board of education may by resolution determine that school elections rather than school meetings be held within such district, as provided by sections 72 through 76 of this act. Such resolution once adopted may be rescinded by the board and shall be rescinded upon petition of a majority of the electors of the district, but such rescission shall not be effective as to any election held less than 90 days following the adoption of the resolution to rescind. In fourth class school districts holding school meetings rather than school elections, such meetings shall be called and held at the times and in the manner provided by sections 34 through 37 of this act. At the annual meeting there shall be elected by ballot school board members to succeed those whose terms then expire, and to fill vacancies. The school electors present at any annual meeting shall have all of the powers granted to school electors in districts of the fourth class. The president of the board of education shall preside, when present, at all meetings of the district, and the secretary of the board, when present, shall act as clerk.

HISTORY: Add. 1956, p. 492, Act 215, Imd. Eff. May 1;—Am. 1957, p. 90, Act 88, Imd. Eff. May 23.

340.56 Board of education; nominating petitions, canvass, withdrawal of candidate, ballot form.

Sec. 56. Candidates for members of the first and succeeding boards to be elected under this chapter shall be nominated by petition. To obtain the printing of the name of any candidate for member of the board on the ballot, the candidate shall file nomination petitions with the secretary of the board not later than 4 p.m. on the thirtieth day prior to the date of the election, unless the thirtieth day falls on a Saturday, Sunday or legal holiday in which case nomination petitions may be served on the secretary up to 4 p.m. on the next secular day. Each petition shall be signed by a number of qualified school electors of the district equal to not less than 1% nor more than 4% of the total number of votes received by the candidate for member of the board of education who received the greatest number of votes at the last election at which members to the board of education were elected but in no case shall such number be less than 20. No elector shall sign petitions for more candidates than are to be elected. The petitions shall be in the form prescribed in section 538 of this act except that the petition shall refer to qualified school electors rather than registered school electors.

Upon the filing of nomination petitions with the secretary of the board, the official shall canvass the same to ascertain if such petitions have been signed by the requisite number of qualified electors, and for the purpose of determining the validity thereof may cause any doubtful signatures to be checked against the registration records of the clerk of any political subdivision in which the petitions were circulated, or may use any other method he deems proper for determining the validity of such doubtful signatures. In case it is determined that the nomination petitions of any candidate do not comply with such requirements, or if such candidate does not possess the qualifications as required by law for membership on the board, it shall be the duty of the secretary of the board to notify immediately such candidate of such fact. In the case of nomination petitions filed on behalf of the secretary of the board, the treasurer of the board shall perform the duties of the secretary in connection therewith instead of the secretary.

After the filing of a nomination petition by or on behalf of a candidate for membership on the board, such candidate shall not be permitted to withdraw unless a written notice of withdrawal, signed by the candidate, is served on the secretary of the board not later than 4 p.m. of the third day after the last day for filing such petition unless the third day falls on a Saturday, Sunday or legal holiday, in which case the notice of withdrawal may be served on the secretary up to 4 p.m. on the next secular day.

The secretary of the board shall prepare and have printed an official ballot which shall contain a separate area for each term of office. The ballot shall be substantially the same form as provided in the general election law and the names of all candidates who have been duly nominated for each term of office shall be printed in the proper place thereon. In the printing of the ballots, the provisions of the general law of this state for transposing and alternating the positions of the names of candidates on primary election ballots shall apply. No party emblem or designation shall be placed on school election ballots. The head of each section of the ballot shall have printed on it the number of persons to be voted for, and the expiration date of the term involved.

HISTORY: New 1955, p. 481, Act 200, Eff. Jul 1;—Am. 1961, p. 305, Act 218, Eff. Sep. 8.—Am. 1968, p. 133, Act 80, Imd. Eff. Jun 4

340.57 Board of education; officers, election; removal.

Sec. 57. The members of the board shall meet on the second Monday of July succeeding their election and annually on the same day thereafter. The members of the board shall organize the board by electing a president, a secretary and a treasurer, and for cause may remove the same from such offices and shall elect others of their number in such places.

HISTORY: New 1955, p. 481, Act 269, Eff. Jul. 1;—Am. 1961, p. 30, Act 29, Imd. Eff. May 12;—Am. 1967, p. 247, Act 183, Imd. Eff. Jun. 30

340.58 Board of education; appointment of officers by county board.

Sec. 58. Whenever, in any case, the board shall fail or neglect to elect the officers of the board as provided in this chapter within 15 days after the annual election, the county board of education shall appoint the said officers from the members of the board: Provided, That if the district extends into more than 1 county, the county boards of education of all such counties shall meet jointly and sit as a single board for the purpose of appointing the officers.

HISTORY: New 1955, p. 482, Act 269, Eff. Jul. 1.

340.59 Treasurer; bond, sureties; exceptions.

Sec. 59. Within 30 days after his appointment, the treasurer of the board shall file with the secretary an official bond in such an amount and form as may be determined by said board, except that when the board treasurer is not directly handling school district money or signing checks no bond is necessary. When the authority for directing the administration of school district money rests with a school district employee, said person and all persons connected therewith shall be bonded. If a surety bond is given, it shall be paid for by the district.

HISTORY: New 1955, p. 482, Act 269, Eff. Jul. 1;—Am. 1966, p. 344, Act 255, Imd. Eff. Jul. 11.

340.60 President; duties.

Sec. 60. It shall be the duty of the president of the board:

Presiding officer at meetings of board.

First, to preside at all meetings of the board;

Countersignature of orders.

Second, To countersign all orders legally drawn by the secretary upon the treasurer for moneys to be disbursed on behalf of the district;

Prosecution of action on treasurer's bond.

Third, To cause an action to be prosecuted in the name of the district on the treasurer's bond in case of any breach of any condition thereof; and

Other duties.

Fourth, To perform such other duties as may be appropriate to the duties of his office in the management of the schools as the board shall determine.

HISTORY: New 1955, p. 482, Act 269, Eff. Jul. 1.

340.61 Secretary; duties.

Sec. 61. It shall be the duty of the secretary of the board:

Clerk at meetings of board.

First, To act as clerk at all meetings of the board;

Record of proceedings of board.

Second, To record the minutes of all meetings, orders, resolutions and other proceedings of the board in proper record books and sign the same;

Notice of elections.

Third, To give or cause to be given the prescribed notice of the annual election and of any special elections of the district;

Annual and other reports.

Fourth, To prepare the annual report of the school district and such other reports as may be required by the superintendent of public instruction;

Orders.

Fifth, To draw and sign orders upon the district treasurer for all moneys to be disbursed by the district, and present such orders to the president to be countersigned by that officer. Each order shall be properly numbered and dated, shall specify the sources of the funds called for, and the purpose for which and the fund upon which it is drawn; and

Other duties.

Sixth, To perform such other duties as are or shall be required by law or by the board.

HISTORY: New 1955, p. 402, Act 269, Eff. Jul. 1.

340.62 Treasurer; duties.

Sec. 62. It shall be the duty of the treasurer of the board:

School moneys; deposit as designated by board.

First, The treasurer shall have the care and custody of all the moneys of the district coming into his hands. He shall deposit all funds of the district with any bank or banking corporation or trust company designated by the board and in such proportion and manner as shall be provided by said board;

Payment of orders.

Second, To pay all orders of the secretary when lawfully drawn and countersigned by the president out of any moneys in his hands belonging to the fund upon which such orders shall be drawn;

Receipts and disbursements; record.

Third, To keep or cause to be kept a record book in which all moneys received and disbursed shall be entered, the sources from which the same have been received, and the person to whom and the objects for which the same have been paid;

Same; report, vouchers.

Fourth, To present to the board at the close of the school year a report in writing containing a statement of all moneys received during such year and of each item of disbursement made and exhibit the vouchers therefor if requested by the board, and he shall maintain a permanent file of said vouchers; and

Other duties.

Fifth, To perform such other duties as are or shall be required by law or by the board.

HISTORY: New 1955, p. 483, Act 269, Eff. Jul. 1.

340.63 Board of education monthly meetings; special meeting, notice, service.

Sec. 63. The board shall hold 1 regular meeting each month at a time and place to be determined by said board and no notice of such meeting shall be required if the hour and place of such meeting shall have been fixed by resolution of the board and placed on the records of the secretary of said board. Special meetings of the board may be called by the president of the board, or any 2 members thereof, by serving on the other members a written notice of the time and place of any such special meeting. Service of such notice may be made by delivering the notice to the members personally or by leaving the same at each member's residence with some person of the household at least 24 hours before such meeting is to take place, or by depositing the same in a government mail receptacle enclosed in a sealed envelope plainly addressed to such member at his last known residence address at least 72 hours before such meeting is to take place. Such service may be made by a member of the board or any employee of the board.

HISTORY: New 1955, p. 483, Act 269, Eff. Jul. 1.

340.64 High schools; establishment, election.

Sec. 64. When directed by a majority vote of the school electors voting on the question at an annual or special election, the board shall establish a high school and determine the qualifications for admission to such high school: Provided, That such vote shall not be required in districts in which high schools have been established at the time of the taking effect of this act, or in the case of the formation of districts by consolidation or annexation where high schools have been established at the time of such consolidation or annexation.

HISTORY: New 1955, p. 483, Act 269, Eff. Jul. 1.

340.65 High schools; discontinuance; tuition and transportation.

Sec. 65. When directed by a majority vote of the school electors, the board may discontinue the high school in such district. In such event, however, said board shall make provision to send the pupils of said high school to the high school of another district or districts. When such action has been taken, said board shall use the necessary funds to pay the tuition as provided in section 761 of this act and shall provide transportation for all such pupils.

HISTORY: New 1955, p. 483, Act 269, Eff. Jul. 1.

340.66 Superintendent of schools; administrators; terms, duties.

Sec. 66. The board may employ a superintendent of schools who shall meet the qualifications prescribed in section 573, and shall employ a superintendent if 12 or more teachers are employed. The contract with the superintendent shall be for a term fixed by the board not to exceed 3 years. The board may employ assistant superintendents, principals, assistant principals, guidance directors and other classified administrators who do not assume tenure in position, for a term fixed by the board not to exceed 3 years, and shall define their duties. The employment shall be under written contract. Notification of nonrenewal of contract shall be given in writing at least 90 days prior to the contract termination date or the contract is renewed for an additional 1-year period. The superintendent shall have the following duties:

(a) To recommend in writing all teachers necessary for the schools and to suspend any teacher for cause until the board may consider such suspension.

(b) To classify and control the promotion of pupils.

(c) To recommend to the board the best methods of arranging the course of study and the proper textbooks to be used.

(d) To make reports in writing to the board and to the state board of education annually, or oftener if required, in regard to all matters pertaining to the educational interests of the district.

(e) To supervise and direct the work of the teachers and other employees of the board.

(f) To assist the board in all matters pertaining to the general welfare of the school and to perform such other duties as the board may determine.

(g) To put into practice the educational policies of the state and of the board in accordance with the means provided by the board.

HISTORY: New 1955, p. 484, Act 269, Eff. Jul. 1;—Am. 1958, p. 117, Act 110, Eff. Sep. 13;—Am. 1966, p. 342, Act 254, Imd. Eff. Jul. 1;—Am. 1970, p. 661, Act 247, Imd. Eff. Dec. 30.

340.67 Discontinuance of schools or grades; tuition and transportation of students.

Sec. 67. At an annual or special election, the school electors may vote to discontinue school in the district for the ensuing or current year and direct the board to make provision to send the children resident therein to another school or schools; or may vote to direct the board to make provision to send the children of any grade to another school or schools. When such action has been taken, the board shall use any funds, except library or building funds, to pay for the tuition and transportation of all such children.

HISTORY: New 1955, p. 484, Act 269, Eff. Jul. 1.

340.68 Transportation within district; routes.

Sec. 68. The board of any fourth class school district may provide for the transportation of pupils within the district when authorized by a majority vote of the school electors of the district voting on the question at an annual or special election. The board shall designate the routes over which the vehicles are to travel: Provided, however, That in districts in which the board was required by law or authorized by the electors to furnish such transportation at the time this act takes effect, such board shall continue such transportation until such authorization is rescinded by a majority of the electors of the district voting on the question at an annual or special election.

HISTORY: New 1955, p. 484, Act 269, Eff. Jul. 1.

340.69 Transportation and tuition to other districts; resident pupils.

Sec. 69. The board may use money in the general fund or funds received from state appropriations for aid to school districts for the purpose of paying tuition and transportation to another district or districts of resident pupils, even though the grades in which such pupils may be enrolled are maintained within the district.

HISTORY: New 1955, p. 484, Act 269, Eff. Jul. 1.

340.70 Number or name of school district; changes.

Sec. 70. The county board of education shall give a number to each of the fourth class school districts within the county: Provided, That when the territory of the district extends into more than 1 county, such number shall be given by the county boards of education of all such counties meeting jointly and sitting as a single board. Such number, together with the name of the county or counties in which the district is located, shall be the legal name of such district: Provided further, That the board of any fourth class school district may by resolution adopt a distinctive name for such school district and such name, after being approved by the county board of education as not being in conflict with the name of another district, together with the name of the county or counties into which the school district extends, shall be the legal name of such school district for all purposes. The board may in like manner change the name of the district. The adoption of a distinctive name or the change in name of any district shall have no effect upon existing obligations incurred in the former name of the district or on the ownership of any real or personal property.

HISTORY: New 1955, p. 485, Act 269, Eff. Jul. 1.

340.71 Board of education; officers, salaries.

Sec. 71. The salaries of members of the board shall be determined by the school electors of the district at the annual election. The electors may provide for a different salary for the office of secretary and the office of treasurer of the board. A salary once fixed by the electors shall remain the same until changed by the electors at an annual election: Provided, That the salary of any member of the board shall not be increased nor shall the salary of any member be decreased after his election or appointment.

HISTORY: New 1955, p. 485, Act 269, Eff. Jul. 1.

340.72 Fourth class school districts; election, time. [M.S.A. 15.3072]

Sec. 72. The annual election of each school district of the fourth class shall be held on the second Monday in June, unless the school district board determines to hold its election at the same time and in conjunction with a city election as provided in section 644k of Act No. 116 of the Public Acts of 1954, as added, being section 168.644k of the Compiled Laws of 1948.

340.73 Special school elections; request, notice, scope.

Sec. 73. Special elections may be called by the board, and the board shall call special elections on the written request of 5% or more of the school electors of the district but not less than 25 electors. Such election shall be called by giving the required legal notice and shall be held in not less than 10 nor more than 15 days from the time the written request is received; but no special election shall be called unless the questions to be voted upon are within the lawful authority of the electors to decide, and no business shall be transacted at a special election unless the same shall be stated in the notice of such election. In a registration school district, the election shall be held in not less than 60 days from the time the written request is received.

HISTORY: New 1955, p. 455, Act 269, Eff. Jul. 1;—Am. 1963, p. 221, Act 157, Eff. Sep. 6.

340.74 Notice of election; publication, posting, contents.

Sec. 74. The board shall determine the time and place of holding any annual or special election, and notice of such time and place shall be given by the secretary by causing notice thereof to be posted in not less than 5 of the most public places in the district at least 6 days previous to such election, 1 copy of which notice for each election shall be posted on the school grounds on or near the front entrance of each school in the district. The notice of election shall specify the day, hours and place of the election, the offices to be filled at such election, if any, the names of all candidates who have been duly nominated for each office to be voted upon, and the substance of all special matters, if any, to be voted upon.

HISTORY: New 1955, p. 455, Act 269, Eff. Jul. 1.

340.75 Questions at annual elections; submission procedure.

Sec. 75. Upon a written request of a number equal to 5% of the registered school electors of a district, but not less than 25 school electors, made not less than 20 nor more than 40 days prior to the annual election, the board shall include in the notice of the annual election such questions submitted in the request as may lawfully be voted upon by the electors and shall submit such questions to the electors at the annual election.

HISTORY: New 1955, p. 455, Act 269, Eff. Jul. 1;—Am. 1965, p. 730, Act 375, Imd. Eff. Jul. 23.

340.76 Elections; polls, time, ballots, board of election inspectors.

Sec. 76. At each annual or special election, the polls of election shall be kept open at least 7 consecutive hours. All questions shall be voted upon by ballot and a proper poll list shall be kept. The board shall appoint school electors of the district in the number it deems sufficient to act as a board of election inspectors at each election. Members of the board of education may serve on any such board of election inspectors, unless they are candidates at such election. Each member of the board of election inspectors shall take the constitutional oath of office before entering upon his duties.

HISTORY: Nov 1955, p. 488, Act 269, Eff. Jul. 1;—Am. 1961, p. 369, Act 218, Eff. Sep. 8.

340.77 Board of education property and site; acquisition, purpose; handling of property, nonexemption from taxation.

Sec. 77. The board of any school district governed by the provisions of this chapter is authorized to locate, acquire, purchase or lease in the name of the district such site or sites within or without the district for schoolhouses, libraries, administration buildings, agricultural farms, athletic fields and playgrounds, as may be necessary; to purchase, lease, acquire, erect or build and equip such buildings for school or library or administration or for use in connection with agricultural farms, athletic fields and playgrounds, as may be necessary; to pay for the same out of the funds of the district provided for that purpose; to sell, exchange or lease any real or personal property of the district which is no longer required thereby for school purposes, and give proper deeds or other instruments passing title to the same and to dedicate or sell and convey land for highway purposes to the state or any agency or instrumentality thereof, including specifically municipalities and boards of county road commissioners, when such action does not divide said school property into 2 or more separate parcels. Any real property owned by a school district which is leased to any private individual, association or corporation shall not be exempt from property taxation during the term of such lease.

HISTORY: Nov 1955, p. 488, Act 269, Eff. Jul. 1;—Am. 1958, p. 229, Act 119, Imd. Eff. Apr. 13;—Am. 1959, p. 118, Act 115, Eff. Mar. 10, 1959;—Am. 1963, p. 295, Act 208, Imd. Eff. May 15.

S 77a, as added by 1968 PA 316

340.77a Fourth class districts; borrowing power. [M.S.A. 15.3077(1)]

Sec. 77a. The board of a school district of the fourth class operating a K-12 program has the power and duty:

Temporary purposes.

(a) To borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 138.2 of the Compiled Laws of 1948, for temporary school purposes such sums of money and on such terms as it deems desirable and to give notes of the district therefor, except that no such loan shall be made for any sum which exceeds the amount which has been voted by the board or the qualified electors of the district.

Long-term loans; bonds; purposes; limitations.

(b) To borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, such sums of money as it deems necessary to purchase sites for buildings, playgrounds, athletic fields or agricultural farms, and to purchase or erect and equip any building which it is authorized to purchase and erect, or to make any permanent improvement which it is authorized to make, and to accomplish this by the issue and sale of bonds of the school district in such form or on such terms as the board deems advisable or by any other reasonable means. No loan shall be made and no bonds shall be issued for a longer term than 30 years nor for any sum which, together with the total outstanding indebtedness of the district, shall exceed 5% of the assessed valuation of the taxable property within the district, unless the proposition of making such loans or of issuing bonds has been submitted to a vote of the school tax electors of the district at a general or special school election and approved by the majority of the electors voting on the question. In such case loans may be made or bonds may be issued for the purposes hereinbefore set forth in an amount equal to that provided by chapter 12 of part 2.

§ 77a, as amended by 1972 PA 197

340.77a Fourth class districts; borrowing power. [M.S.A. 15.3077(1)]

Sec. 77a. The board of a school district of the fourth class operating a K-12 program has the power and duty:

Temporary purposes.

(a) To borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 138.2 of the Compiled Laws of 1948, for temporary school purposes such sums of money and on such terms as it deems desirable and to give notes of the district therefor, except that no such loan shall be made for any sum which exceeds the amount which has been voted by the board or the qualified electors of the district.

Long-term loans; bonds; purposes; limitations.

(b) To borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, such sums of money as it deems necessary to purchase sites for buildings, playgrounds, athletic fields or agricultural farms, and to purchase or erect and equip any building which it is authorized to purchase and erect, or to make any permanent improvement which it is authorized to make, and to accomplish this by the issue and sale of bonds of the school district in such form or on such terms as the board deems advisable, or by any other reasonable means. No loan shall be made and no bonds shall be issued for a longer term than 30 years nor for any sum which, together with the total outstanding bonded indebtedness of the district, shall exceed 5% of the state equalized valuation of the taxable property within the district, unless the proposition of making such loans or of issuing bonds has been submitted to a vote of the school tax electors of the district at a general or special school election and approved by the majority of the electors voting on the question. In such case loans may be made or bonds may be issued for the purposes hereinbefore set forth in an amount equal to that provided by chapter 12 of part 2.

340.77b Remodeling; use of bond proceeds; approval; definition.
[M.S.A. 15.3077(2)]

Sec. 77b. All or any portion of the proceeds from the sale of school district bonds may be expended for the remodeling of existing school buildings of the district when in the judgment of the board of education of the school district the remodeling will contribute positively to the health, security or welfare of the pupils of the school district if such uses are approved by the superintendent of public instruction if the bonds are qualified bonds as defined by section 3 of Act No. 108 of the Public Acts of 1961 or by the municipal finance commission if the bonds have not been so qualified. Remodeling means the alteration or construction of structural components of buildings, including walls, roofs, partitions, hallways, stairways and means of egress and the replacement, relocation or reconstruction of heating, ventilating, incineration, electrical, security and sanitary systems.

CHAPTER 4.

SCHOOL DISTRICTS OF THE THIRD CLASS.

340.101 Third class district; continuance, reclassification.

Sec. 101. Each school district organized as a school district of the third class at the time of the taking effect of this act shall continue to be a school district of the third class subject to reclassification as hereinafter provided and be governed by the provisions of this chapter and by such provisions of part 2 of this act as are not inconsistent with this chapter.

HISTORY: New 1955, p. 486, Act 269, Eff. Jul. 1.

340.102 Third class districts; reclassification in certain fourth class districts.

Sec. 102. The board of any fourth class school district having a school census of more than 2,400 and less than 30,000 children between the ages of 5 and 20, as certified by the superintendent of public instruction, may submit the question of becoming a district of the third class to a vote of the electors of such district at any annual or special election. The vote upon the question shall be by ballot which shall be in substantially the following form:

"Shall ..... (name of school district) be reclassified and become a school district of the third class?

Yes ☐
No ☐"

If a majority of the school electors voting on the question vote in favor of becoming a district of the third class, then such reclassification shall take immediate effect.

HISTORY: New 1955, p. 486, Act 269, Eff. Jul. 1;—Am. 1959, p. 452, Act 271, Imd. Eff. Nov. 3.

340.103 Third class districts; election and reclassification.

Sec. 103. Whenever the board of a district of the fourth class having a school census of more than 2,400 and less than 30,000 children between the ages of 5 and 20, as certified by the superintendent of public instruction, is presented with a petition signed by not less than 300 school electors of the district to submit the question of becoming a third class district to a vote of the electors at a special election or the next annual election, the board shall proceed to call such special election or submit the question to a vote of the electors at the next annual election. If such petition is presented within 90 days, but not less than 20 days before the time of the annual election, such question shall be submitted at the annual election, even though the petition may request a special election. If the board is petitioned to submit the question at a special election and such petition is presented 91 or more days before the annual election, the board shall call such election to be held within 30 days from the time such petition is presented. If such petition is presented less than 20 days before the time of the annual election, such question shall be submitted at a special election held not more than 30 days after the annual election.

HISTORY: New 1955, p. 487, Act 269, Eff. Jul. 1;—Am. 1959, p. 452, Act 271, Imd. Eff. Nov. 3.

340.104 Repealed. 1959, p. 453, Act 271, Imd. Eff. Nov. 3.

Section provided for determination of population in third class districts.

340.105 Third class districts; notice of reclassification.

Sec. 105. Whenever the electors of the district have by their vote approved the reclassification of a fourth class district to a district of the third class, it shall be the duty of the secretary of the board to give notice of such reclassification, in writing, to the county superintendent of schools of each county in which the district is situated and to the superintendent of public instruction within 10 days of the vote thereon.

HISTORY: New 1955, p. 487, Act 200, Eff. Jul. 1.

340.106 Third class district name; changes.

Sec. 106. Each school district organized and operating under the provisions of this chapter shall be designated and known as the "School District of the ..... (here insert the name of the city or village or township in which the whole or a part of said school district is situated)", and such designation, together with the name of the county or counties into which the district extends, shall be the legal name of such district for all purposes: Provided, That the board of any third class school district may by resolution adopt a distinctive name for such school district and such name, after being approved by the county board of education as not being in conflict with the name of another district, together with the name of the county or counties into which the school district extends, shall be the legal name of such school district for all purposes. The board may in like manner change the name of the district. The adoption of a distinctive name or the change in name of any district shall have no effect upon existing obligations incurred in the former name of the district or on the ownership of any real or personal property.

HISTORY: New 1955, p. 487, Act 200, Eff. Jul. 1.

340.107 Board of education; membership, term, election, vacancies, term extension.

Sec. 107. In each school district of the third class, the board shall consist of 7 members elected from the district at large and their terms arranged so that 2 of those elected members shall serve for 1 year, 2 for 2 years, 2 for 3 years, and 1 for 4 years; thereafter, at the next school election immediately preceding the expiration of the respective terms of these officers, their successors shall be elected to serve for terms of 4 years and until their successors are elected and qualified. When any school district of the fourth class becomes a school district of the third class by a vote of the electors, additional members shall be elected to the board of education as provided under section 334 of this act. Any school district of the third class may hold its election biennially at the same time that the city or village election is held. The board shall determine whether the district shall hold its election at the time of the city or village election. If the school district holds its election at the same time of the city or village election, the term of office shall be for 6 years. Two of the members of the board shall serve for 2 years, 2 for 4 years, and 3 for 6 years. At the next school election immediately preceding the expiration of the respective terms of these officers, their successors shall be elected to serve for terms of 6 years and until their successors are elected and qualified. In case the board of any school district in which the members of the board are elected for a 6 year term of office, by a majority vote, provides that the term of office of members of the board shall be for 4 years, then in any such school district, notwithstanding the provisions of this section to the contrary, the term of office of members of the board shall be for 4 years. The present members of the board shall serve

the balance of their respective unexpired terms. The board, in determining that members of the board shall serve for 4 year terms, shall provide in the resolution that elections thereafter shall be held on the second Monday in June, as provided in section 108 of this act, and shall provide for a system of rotation of terms of office which is as equal as may be and shall fairly adjust the length of terms and the number of members to be elected annually until the rotation is established. After the rotation is established, but not more than 8 years after the adoption of the resolution, not more than 2 members shall be elected in any one year to fill vacancies occurring by expiration of terms.

If any person elected fails to take the oath of office within 10 days after service of notice of his election, or if a vacancy occurs as provided in section 494 of this act, the vacancy shall be filled by an election by a majority of the remaining members of the board until the next school election, when the vacancy shall be filled by an election for the remainder of the term of the former member. Where the board of education of a school district of the third class has voted to hold elections biennially at the same time as the state spring biennial election and the city or village election is not held on the same date, such board of education may determine to hold its biennial election at the same time as the city or village election in 1966 and biennially in the even numbered years thereafter. The terms of office of the present members of such board of education expiring in 1965, 1967 and 1969, are extended until their successors are elected and qualified at the city or village biennial election held in 1966, 1968 and 1970, respectively.

HISTORY: New 1955, p. 487, Act 269, Eff. Jul. 1;—Am. 1958, p. 333, Act 195, Eff. Sep. 13;—Am. 1965, p. 81, Act 49, Imd. Eff. Jun 1

340.108 Board of education; annual election, time.

Sec. 108. The regular annual school election in each school district of the third class shall be held on the second Monday in June by the board. The members of the board in all school districts of the third class hereunder shall be elected at the regular annual school election and their terms shall begin on July first, following their election.

HISTORY: New 1955, p. 488, Act 269, Eff. Jul. 1.

CITED IN OTHER SECTIONS: The above section is cited in § 380.34.

340.109 Board of education; special election, notice, prerequisites.

Sec. 109. Special elections may be called by the board in any school district of the third class hereunder at such times and places in such district as they shall designate, and it shall be the duty of such board to call such an election on receipt of the written request of not less than 10% of the registered school electors of the district qualified to vote upon the question by giving the notice hereinafter prescribed. No special election shall be called unless the question to be voted on and decided thereat may be decided by the qualified school electors, and all questions to be submitted at such election shall be stated briefly in the notice thereof.

HISTORY: New 1955, p. 488, Act 269, Eff. Jul. 1.

340.110 Board of education; registered elections.

Sec. 110. All school districts of the third class shall be registration districts and all elections therein shall be governed by the provisions of chapter 8 of part 2 of this act.

HISTORY: New 1955, p. 488, Act 269, Eff. Jul. 1.

340.111 Board of education; meetings, officers, quorum, record.

Sec. 111. The members of the board of any district of the third class hereunder elected at the first election held under this chapter shall meet on or before the second Monday of July succeeding their election and annually on the same day thereafter, and organize the board by electing a president, a vice-president, a secretary and a treasurer. The president and vice-president shall be members of the board, but the secretary and treasurer need not be members. The board shall hold regular meetings on the second Monday of each month, or at such other times as it may by resolution or bylaws provide. The board may in its bylaws provide for calling and holding special meetings. A majority of the board shall constitute a quorum and it shall keep a proper record of all its proceedings.

HISTORY: New 1955, p. 498, Act 269, Eff. Jul. 1;—Am. 1958, p. 71, Act 68, Eff. Sep. 13;—Am. 1967, p. 947, Act 185, Imd. Eff. Jun. 30.

340.112 Board of education; treasurer, secretary; duties, salaries, bonds.

Sec. 112. The treasurer of the board shall keep the funds of the district, except that the board may place responsibility for the administration of school district money with the school district business manager; keep proper books of account thereof; keep an interest account of the interest received from all school funds belonging to the district and credit all interest received thereon to the funds; pay out the funds belonging to the school district for the purposes specified by law, or, in the case of gifts or donations for the purposes for which the money is given or donated, on a proper order signed by the secretary and countersigned by the president of the board; and perform such other duties as the board may in its bylaws prescribe. The board may prescribe the duties of the secretary and provide for the salary to be paid the secretary and treasurer thereof and may require proper bonds from such officers, except that when the board treasurer is not directly handling school district money or signing checks no bond is necessary, and where the authority for the administration of school district money rests with the school district business manager, he and all persons connected therewith shall be bonded. No member of the board or officer thereof, except the secretary and treasurer, shall receive any compensation for any service rendered the district, unless authorized by the qualified electors of the district. The salary of any member of the board shall not be increased nor shall the salary of any member be decreased after his election or appointment.

HISTORY: New 1955, p. 499, Act 269, Eff. Jul. 1;—Am. 1966, p. 344, Act 255, Imd. Eff. Jul. 11.

340.113 Board of education; powers, duties.

Sec. 113. The board of any school district of the third class hereunder shall have the powers and duties:

Sites for schoolhouses, libraries, farms, athletic fields and playgrounds; buildings, property.

(a) To locate, acquire, purchase or lease in the name of the district such site or sites within or without the district for schoolhouses, libraries, administration buildings, agricultural farms, athletic fields and playgrounds, as may be necessary; to purchase, lease, acquire, erect, or build and equip such buildings for school or library or administration or for use in connection with agricultural farms, athletic fields and playgrounds, as may be necessary; to pay for the same out of the funds of the district provided for that purpose; to sell, exchange or lease, subject to the provisions of section 354 of this act, any real or personal property of the district which is no longer required thereby for school purposes, and to give proper deeds, bills of sale or other instruments passing title to the same;

Condemnation proceedings.

(b) To institute and maintain proceedings in the proper court for the condemnation of private property for public use for all purposes for which said board is authorized by law to acquire and hold property, when said board shall have first declared the taking necessary for such use and that the same is for the use and benefit of the public. When the board shall have made such declaration, such condemnation proceedings may be instituted and conducted in the court specified and in the manner provided by the general school laws of the state relating to the condemnation of private property for public use, or may be brought under the terms of Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41, inclusive, of the Compiled Laws of 1948, or any other appropriate state law.

HISTORY: New 1955, p. 489, Act 269, Eff. Jul. 1;—Am. 1957, p. 137, Act 108, Imd. Eff. May 24.

340.114 Board of education; educational activities.

Sec. 114. The board of any school district of the third class hereunder shall have the powers and duties:

Grades, schools, departments, courses of study.

(a) To establish and carry on such grades, schools and departments or courses of study as it shall deem necessary or desirable for the maintenance and improvement of public education;

Agricultural, trade and other vocational schools.

(b) To establish, equip and maintain agricultural, trade and other vocational schools, and, if deemed necessary by such board, to acquire land outside the limits of the said school district therefor; and to have general control thereover for school purposes.

HISTORY: New 1955, p. 489, Act 269, Eff. Jul. 1.

340.115 Same; finances. [M.S.A. 15.3115]

Sec. 115. The board of any school district of the third class hereunder shall have the powers and duties:

Temporary loans.

(a) To borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 138.2, inclusive, of the Compiled Laws of 1948, for temporary school purposes such sum or sums of money and on such terms as it may deem desirable and to give notes of the district therefor: Provided, That no such loan shall be made for any sum which shall exceed the amount which has been voted by the board or the qualified electors of the district;

Purchase of sites; erection of buildings.

(b) To borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 138.2, inclusive, of the Compiled Laws of 1948, such sum or sums of money as it may deem necessary to purchase sites for buildings, playgrounds, athletic fields or agricultural farms, and to purchase or erect and equip any building or buildings which it is authorized to purchase and erect, or to make any permanent improvement which it is authorized to make, and to accomplish this by the issue and sale of bonds of such school district in such form or on such terms as the board may deem advisable, or by any other reasonable means: Provided, That no loan shall be made and no bonds shall be issued for a longer term than 30 years nor for any sum which, together with the total outstanding indebtedness of the district, shall exceed 2% on the assessed valuation of the taxable property within such district, unless the proposition of making such loans or of issuing bonds shall have been submitted first to a vote of the school tax electors of the district at a general or special school election and approved by the majority of the electors actually voting on the same, in which event loans may be made or bonds may be issued for the purposes hereinbefore set forth in an amount equal to that provided by chapter 12 of part 2 of this act.

§ 115, as amended by 1968 PA 316

340.115 Third class districts; borrowing power. [M.S.A. 15.3115]

Sec. 115. The board of any school district of the third class hereunder shall have the powers and duties:

Temporary purposes.

(a) To borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, for temporary school purposes such sum or sums of money and on such terms as it may deem desirable and to give notes of the district therefor, except that no such loan shall be made for any sum which shall exceed the amount which has been voted by the board or the qualified electors of the district.

Long-term loans; bonds; purposes; limitations.

(b) To borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, such sum or sums of money as it may deem necessary to purchase sites for buildings, playgrounds, athletic fields or agricultural farms, and to purchase or erect and equip any building or buildings which it is authorized to purchase and erect, or to make any permanent improvement which it is authorized to make, and to accomplish this by the issue and sale of bonds of such school district in such form or on such terms as the board may deem advisable, or by any other reasonable means. No loan shall be made and no bonds shall be issued for a longer term than 30 years nor for any sum which, together with the total outstanding indebtedness of the district, shall exceed 5% on the assessed valuation of the taxable property within such district, unless the proposition of making such loans or of issuing bonds shall have been submitted first to a vote of the school tax electors of the district at a general or special school election and approved by the majority of the electors actually voting on the same. In such case loans may be made or bonds may be issued for the purposes hereinbefore set forth in an amount equal to that provided by chapter 12 of part 2.

§ 115, as last amended by 1972 PA 197

340.115 Third class districts; borrowing power. [M.S.A. 15.3115]

Sec. 115. The board of any school district of the third class hereunder shall have the powers and duties:

Temporary purposes.

(a) To borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, for temporary school purposes such sum or sums of money and on such terms as it may deem desirable and to give notes of the district therefor, except that no such loan shall be made for any sum which shall exceed the amount which has been voted by the board or the qualified electors of the district.

Long-term loans; bonds; purposes; limitations.

(b) To borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, such sum or sums of money as it may deem necessary to purchase sites for buildings, playgrounds, athletic fields or agricultural farms, and to purchase or erect and equip any building or buildings which it is authorized to purchase and erect, or to make any permanent improvement which it is authorized to make, and to accomplish this by the issue and sale of bonds of such school district in such form or on such terms as the board may deem advisable, or by any other reasonable means. No loan shall be made and no bonds shall be issued for a longer term than 30 years nor for any sum which, together with the total outstanding bonded indebtedness of the district, shall exceed 5% on the state equalized valuation of the taxable property within such district, unless the proposition of making such loans or of issuing bonds shall

have been submitted first to a vote of the school tax electors of the district at a general or special school election and approved by the majority of the electors actually voting on the same. In such case loans may be made or bonds may be issued for the purposes hereinbefore set forth in an amount equal to that provided by chapter 12 of part 2.

340.115a Remodeling; use of bond proceeds; approval; definition.
[M.S.A. 15.3115(1)]

Sec. 115a. All or any portion of the proceeds from the sale of school district bonds may be expended for the remodeling of existing school buildings of the district when in the judgment of the board of education of the school district the remodeling will contribute positively to the health, security or welfare of the pupils of the school district if such uses are approved by the superintendent of public instruction if the bonds are qualified bonds as defined by section 3 of Act No. 108 of the Public Acts of 1961 or by the municipal finance commission if the bonds have not been so qualified. Remodeling means the alteration or construction of structural components of buildings, including walls, roofs, partitions, hallways, stairways and means of egress and the replacement, relocation or reconstruction of heating, ventilating, incineration, electrical, security and sanitary systems.

340.116 Board of education; property, care, custody, sanitation, medical inspection; school term.

Sec. 116. The board of any school district of the third class hereunder shall have the powers and duties:

(a) To have the care and custody of all school property and to provide suitable school privileges, sanitary conditions, and medical inspection for the schools of the district;

(b) To fix the length of time school shall be kept in all of the schools of the district, which shall not be less than 180 days.

HISTORY: New 1955, p. 490, Act 269, Eff. Jul 1.

340.117 Board of education; library, museum, employees.

Sec. 117. The board of any school district of the third class hereunder shall have the powers and duties:

To establish and maintain or continue a library and museum, which institutions may be separately operated if desired, for the public schools of the district, if it shall deem it advisable to do so, and to provide for its or their care and management. For this purpose, said board may appoint librarians and hire other employees for such library and museum and fix their salaries, may purchase such books and apparatus as may be necessary, and may include in the general budget for the purpose of the schools such sums as may be necessary for building for, and for the maintenance and support of, any library and museum established, and such board may appoint a board of library commissioners and a board of museum commissioners of not to exceed 7 persons, which boards shall be separate boards if such board of education so directs. Members of the board of education shall not be eligible to membership on such boards. Such board or boards shall have control and direction of the public library or libraries and museum or museums in such district subject to the approval of the board of education therein, and shall keep a correct record of its or their proceedings. All moneys for any such libraries, including the fines devoted by law for the maintenance of district or school li-

braries in such district, which when collected shall be paid to the treasurer of the board of education therein, shall be kept by said treasurer and paid out by him on the order of the board of library commissioners approved by the secretary of the board of education.

HISTORY: New 1955, p. 490, Act 269, Eff. Jul. 1.

340.118 Board of education; school census, annual report, business manager.

Sec. 118. The board of any school district of the third class hereunder shall have the powers and duties:

(a) To provide for the taking of a school census as required by law;

(b) To make an annual report to the superintendent of public instruction at such time and in such form as he may prescribe;

(c) To appoint in its discretion, a business manager for the school district and fix his compensation.

HISTORY: New 1955, p. 491, Act 269, Eff. Jul. 1.

340.119 Board of education; superintendent and administrators; term, duties.

Sec. 119. The board of any school district of the third class shall have the powers and duties:

To contract with, appoint and employ a suitable person, not a member of the board, as superintendent of schools, who shall meet the requirements prescribed in section 573, and who shall hold his office for a term fixed by the board and not to exceed 5 years. The board may contract with, appoint an employ suitable persons, not members of the board, as assistant superintendents, principals, assistant principals, guidance directors, and other classified administrators who do not assume tenure in position, for a term fixed by the board not to exceed 3 years and shall define their duties. The employment shall be under written contract. Notification of nonrenewal of contract shall be given in writing at least 90 days prior to the contract termination date or the contract is renewed for an additional 1-year period. The superintendent shall have powers and duties as follows:

(a) To put into practice the educational policies of the state and of the board in accordance with the method provided by the board.

(b) To recommend in writing all teachers necessary for the schools and to suspend any teacher for cause until the board may consider such suspension.

(c) To classify and control the promotion of pupils.

(d) To recommend to the board the best methods of arranging the course of study and the proper textbooks to be used.

(e) To make reports in writing to the board and to the state board of education annually or oftener if required, in regard to all matters pertaining to the educational interests of the district.

(f) To supervise and direct the work of the teachers and other employees of the board.

(g) To assist the board in all matters pertaining to the general welfare of the school, and to perform such other duties as the board may determine.

HISTORY: New 1955, p. 491, Act 269, Eff. Jul. 1;—Am. 1969, p. 343, Act 254, Imd. Eff. Jul. 11;—Am. 1970, p. 602, Act 247, Imd. Eff. Dec. 30.

340.120 Board of education; school tax levy; apportionment.

Sec. 120. The board of any school district of the third class hereunder shall have the powers and duties:

To make an estimate annually on a day to be determined by the board of the amount of taxes deemed necessary for the ensuing year for the purpose of expenditure within the power of the board, which estimate shall specify the amounts required for the different objects, and to report the same as the regular school tax levy for such district to the proper assessing officer or officers, who shall apportion the school taxes in the district in the same manner as the other taxes of the city, village or township are apportioned, and the amount so apportioned shall be assessed, levied, collected and returned for each portion of the district in the same manner as the taxes of the city, village or township including such portion of the district. The board, if the district is extended beyond the limits of any single municipality, shall, within the time provided by law for certifying taxes by township clerks, certify to the board of supervisors all amounts to be raised therein for school purposes. The board of supervisors shall, in accordance with law, apportion such school taxes to the several municipalities possessing territory in such district in proportion to the assessed valuation of each municipality within such district, and shall certify the same to the proper officer thereof.

HISTORY: New 1955, p. 401, Act 269, Eff. Jul. 1.

340.121 Board of education; duties.

Sec. 121. The board of any school district of the third class shall have the powers and duties:

Payment of school funds.

(a) To certify to the treasurer of the district for payment out of the school funds thereof all claims and demands against the board or district, which shall be allowed by the board under such rules and regulations as it may establish.

Reports of proceedings, receipts and expenditures.

(b) To print and publish immediately after each meeting in such manner as the board shall decide all proceedings of the board at the meeting and to make and publish annually, at the end of the fiscal year, in some daily or weekly newspaper of general circulation in the district, either separately or in connection with the report of the city or village in which the district or the greater part thereof is situated, a complete report of its receipts and expenditures.

Transportation of pupils.

(c) To provide adequate facilities for transportation within the district of pupils from and to their homes when the board deems it advisable.

Tuition payments to other districts.

(d) To use money in the general fund or funds received from state appropriations for aid to school districts for the purpose of paying tuition and transportation to another district of resident pupils, even though the grades in which the pupils may be enrolled are maintained within the district.

Carrying on of public schools.

(e) In general to do anything not inconsistent with this act which is necessary for the proper establishment, maintenance, management and carrying on of the public schools of such district.

HISTORY: New 1955, p. 492, Act 269, Eff. Jul. 1;—Am. 1961, p. 371, Act 219, Eff. Sep. 8.

340.122 Borrowing power.

Sec. 122. School districts operating under this chapter shall be governed by Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 138.2, inclusive, of the Compiled Laws of 1948, in force or as the same may hereafter be amended.

HISTORY: New 1955, p. 492, Act 269, Eff. Jul. 1.

CHAPTER 5.

SCHOOL DISTRICTS OF THE SECOND CLASS.

PUBLIC ACTS 1955—No. 269.

340.158 Borrowing power, bond issue, approval. [M.S.A. 15.3158]

Sec. 158. The board may from time to time, on such terms as it may deem proper, borrow for temporary school purposes not to exceed the amount of unpaid, voted taxes, and, in case of an emergency, the board may borrow in addition thereto an amount not to exceed ½ mill on the assessed valuation of the school district and may give the note or bond of the board therefor, which shall be paid from the first school moneys collected thereafter. For the purpose of purchasing sites, erecting schoolhouses and other buildings, and for equipping the same, the board may borrow such sums of money as it may deem necessary and may issue and sell its bonds therefor upon such rates of interest and for such time and in such amount as it may think proper, and in such form and with such bonds and coupons signed and countersigned in such manner as it may by resolution direct, but the action of the board authorizing such loan shall first be submitted to the common council, city commission, or other legislative body of the city or to the school tax electors of the district for approval, and no such issue of bonds shall be valid unless the proposal to issue the same shall have been approved by a majority vote of the members-elect of the common council, city commission or legislative body of the city, or be approved by a majority vote of the school tax electors of such city district voting thereon at any election at which the question of approving such an issue of school bonds shall be submitted to them by the said board. School districts operating under this chapter shall be governed by Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 138.2, inclusive, of the Compiled Laws of 1948, in force or as the same may hereafter be amended.

§ 158, as amended by 1962 PA 177

340.158 Same; borrowing power, temporary purposes, bonds, approval. [M.S.A. 15.3158]

Sec. 158. The board may:

(a) Borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 138.2 of the Compiled Laws of 1948, for temporary school purposes such sums of money and on such terms as it may deem desirable and give notes of the district therefor.

(b) Borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, such sums of money as it may deem necessary to purchase sites for buildings, playgrounds, athletic fields or agricultural farms, and to purchase and erect and equip any buildings which it is authorized to purchase and erect, or to make any permanent improvement which it is authorized to make, and to accomplish this by the issue and sale of bonds of the school district in such form or on such terms as the board may deem advisable, or by any other reasonable means. No loan shall be made and no bonds shall be issued for a longer term than 30 years nor for any sum which, together with the total outstanding bonded indebtedness of the district, shall exceed 2% of the state equalized valuation of the taxable property within the district, unless the proposition of making the loans or of issuing bonds has been submitted to a vote of the school tax electors of the district at a general or special school election and approved by the majority of the registered electors actually voting on the same, in which event loans may be made or bonds may be issued for the purposes set forth in an amount equal to that provided by chapter 12 of part 2 of this act.

§ 158, as last amended by 1968 PA 316

340.158 Second class districts; borrowing power. [M.S.A. 15.3158]

Sec. 158. The board may:

Temporary purposes.

(a) Borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, for temporary school purposes such sums of money and on such terms as it may deem desirable and give notes of the district therefor.

Long-term loans; bonds; purposes; limitations.

(b) Borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, such sums of money as it may deem necessary to purchase sites for buildings, playgrounds, athletic fields or agricultural farms, and to purchase and erect and equip any buildings which it is authorized to purchase and erect, or to make any permanent improvement which it is authorized to make, and to accomplish this by the issue and sale of bonds of the school district in such form or on such terms as the board may deem advisable, or by any other reasonable means. No loan shall be made and no bonds shall be issued for a longer term than 30 years nor for any sum which, together with the total outstanding bonded indebtedness of the district, shall exceed 5% of the state equalized valuation of the taxable property within the district, unless the proposition of making the loans or of issuing bonds has been submitted to a vote of the school tax electors of the district at a general or special school election and approved by the majority of the registered electors actually voting on the same, in which event loans may be made or bonds may be issued for the purposes set forth in an amount equal to that provided by chapter 12 of part 2.

340.165 Board of education; authority as to sites for school purposes; agricultural, trade and vocational schools, establishment; acquisition of land outside district.

Sec. 165. The board shall have full power and authority to locate, purchase or lease, in the name of the district, such site or sites for schoolhouses, administration buildings, agricultural sites, athletic fields and playgrounds as may be necessary out of the funds provided for that purpose, and may make sale of any site or other property of the district which is no longer required for school purposes, and may also establish, equip and maintain agricultural, trade and other vocational schools, and if deemed necessary by such board may acquire land for such purpose outside the district limits. Land outside the school district shall not be acquired unless approved by a ⅗ vote of all members-elect of the board of education.

HISTORY: New 1955, p. 490, Act 269, Eff. Jul. 1;—Am. 1970, p. 104, Act 72, Imd. Eff. Jul. 12.

CHAPTER 6.

SCHOOL DISTRICTS OF THE FIRST CLASS.

340.192 Board of education; body corporate; name, powers, liabilities; right of eminent domain.

Sec. 192. The said board shall be a body corporate under the name and title of "the board of education of the school district of the city of ....." and under that name may sue and be sued and may take, use, hold, lease, sell and convey real property without restriction as to location and personal property, including property received by gift, devise or bequest, as the interest of said schools and the prosperity and welfare of said school district may require. The said board may take and hold real and personal property for the use of the public schools within and without its corporate limits and may sell and convey the same. The board chosen pursuant to this chapter shall be the successor of any school corporation or corporations existing within the limits of such city or cities and shall be vested with the title to all property, real and personal, vested in the school corporation of which it is the successor. Said board shall be liable to pay the indebtedness and obligations of the school corporations of which it is the successor in the manner and to the extent provided in this chapter. Said board shall have power to purchase, lease, and take by the right of eminent domain all property, erect and maintain or lease all buildings, employ and pay all persons, and do all other things in its judgment necessary for the proper establishment, maintenance, management and carrying on of the public schools and for the protection of other property of the school district, and to do anything whatever that may advance the interests of education, the good government and prosperity of the free schools in said city, and the welfare of the public concerning the same, and it shall have authority to adopt bylaws, rules and regulations for its own government and for the control and government of all schools, school property and pupils. If property is sought to be taken by eminent domain, such proceedings may be brought under the terms of Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41 of the Compiled Laws of 1948, or any other appropriate state law.

HISTORY: New 1955, p. 501, Act 269, Eff. Jul. 1;—Am. 1965, p. 723, Act 307, Imd. Eff. Jul. 23.

§ 220a, as added by 1965 PA 29

340.220a First class district; borrowing power, for temporary school purposes. [M.S.A. 15.3220(1)]

Sec. 220a. The board may:

(a) Borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 138.2 of the Compiled Laws of 1948, for temporary school purposes such sums of money and on such terms as it may deem desirable and give notes of the district therefor.

Bonds; purposes, terms; limitations.

(b) Borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, such sums of money as it may deem necessary to purchase sites for buildings, playgrounds, athletic fields or agricultural farms, and to purchase and erect and equip any buildings which it is authorized to purchase and erect, or to make any permanent improvement which it is authorized to make, and to accomplish this by the issue and sale of bonds of the school district in such form or on such terms as the board may deem advisable, or by any other reasonable means. No loan shall be made and no bonds shall be issued for a longer term than 30 years nor for any sum which, together with the total outstanding bonded indebtedness of the district, shall exceed 2% of the state equalized valuation of the taxable property within the district, unless the proposition of making the loans or of issuing bonds has been submitted to a vote of the school tax electors of the district at a general or special school election and approved by the majority of the registered electors actually voting on the same, in which event loans may be made or bonds may be issued for the purposes set forth in an amount equal to that provided by chapter 12 of part 2 of this act.

§ 220a, as amended by 1968 PA 316

340.220a First class districts; borrowing power. [M.S.A. 15.3220(1)]

Sec. 220a. The board may:

Temporary purposes.

(a) Borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, for temporary school purposes such sums of money and on such terms as it may deem desirable and give notes of the district therefor.

Long-term loans; bonds; purposes; limitations.

(b) Borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, such sums of money as it may deem necessary to purchase sites for buildings, playgrounds, athletic fields or agricultural farms, and to purchase and erect and equip any buildings which it is authorized to purchase and erect, or to make any permanent improvement which it is authorized to make, and to accomplish this by the issue and sale of bonds of the school district in such form or on such terms as the board may deem advisable, or by any other reasonable means. No loan shall be made and no bonds shall be issued for a longer term than 30 years nor for any sum which, together with the total outstanding bonded indebtedness of the district, shall exceed 3% of the state equalized valuation of the taxable property within the district, unless the proposition of making the loans or of issuing bonds has been submitted to a vote of the school tax electors of the district at a general or special school election and approved by the majority of the registered electors actually voting on the same, in which event loans may be made or bonds may be issued for the purposes set forth in an amount equal to that provided by chapter 12 of part 2.

§ 220a, as last amended by 1971 PA 23

340.220a First class school districts; borrowing power. [M.S.A. 15.3220(1)]

Sec. 220a. The board may:

(a) Borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, for temporary school purposes such sums of money and on such terms as it may deem desirable and give notes of the district therefor.

(b) Borrow, subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, such sums of money as it may deem necessary to purchase sites for buildings, playgrounds, athletic fields or agricultural farms, and to purchase and erect and equip any buildings which it is authorized to purchase and erect, or to make any permanent improvement which it is authorized to make, and to accomplish this by the issue and sale of bonds of the school district in such form or on such terms as the board may deem advisable, or by any other reasonable means. No loan shall be made and no bonds shall be issued for a longer term than 30 years nor for any sum which, together with the total outstanding bonded indebtedness of the district, shall exceed 5% of the state equalized valuation of the taxable property within the district, unless the proposition of making the loans or of issuing bonds has been submitted to a vote of the school tax electors of the district at a general or special school election and approved by the majority of the registered electors actually voting on the same, in which event loans may be made or bonds may be issued for the purposes set forth in an amount equal to that provided by chapter 12 of part 2.

PART 2.

CHAPTER 2.

GENERAL POWERS AND DUTIES OF DISTRICTS.

340.352 Body corporate; powers, rights, liabilities; presumption.

Sec. 352. Every school district shall be a body corporate under the name provided in this act, and may sue and be sued in its name, may acquire and take property, both real and personal, for educational purposes within or without its corporate limits, by purchase, gift, grant, devise or bequest, and hold and use the same for such purposes, and may sell and convey the same as the interests of such district may require, subject to the conditions of this act contained. As such body corporate, every school district shall be the successor of any school district previously existing within the same territorial limits and shall be vested with all rights of action, with the title of all property,

real and personal, of the district of which it is the successor, and the indebtedness and obligations of the district superseded shall become and be the indebtedness and obligations of the succeeding district, except as otherwise provided in chapters 3, 4 and 5, part 2 of this act. Every school district shall in all cases be presumed to have been legally organized when it shall have exercised the franchises and privileges of a district for the term of 2 years; and such school district and its officers shall be entitled to all the rights, privileges and immunities, and be subject to all the duties and liabilities conferred upon school districts by law.

HISTORY: New 1955, p. 527, Act 200, Eff. Jul. 1.

340.355 School discrimination; race, color, intellectual progress.

Sec. 355. No separate school or department shall be kept for any person or persons on account of race or color. This section shall not be construed to prevent the grading of schools according to the intellectual progress of the pupil, to be taught in separate places as may be deemed expedient.

HISTORY: New 1955, p. 528, Act 200, Eff. Jul. 1.

CHAPTER 3.

CONSOLIDATION OF DISTRICTS.

340.401 Consolidation of districts; quota of school age children, classification.

Sec. 401. Any 2 or more school districts, except districts of the first and second class, in which the total number of children between the ages of 5 and 20 years, is 75 or more, may consolidate to form a single school district as hereinafter provided. The consolidated district so formed shall be a district of the fourth class or third class, depending upon the classification its population entitles it to under the provision of part 1 of this act.

HISTORY: New 1955, p. 531, Act 200, Eff. Jul. 1.

340.402 Consolidation of districts; request, approval, modification of proposal; location in more than one county.

Sec. 402. Whenever the county superintendent of schools shall be requested in writing by not less than 10 school electors of each of 2 or more districts to initiate proceedings for the consolidation of the said 2 or more districts, he shall refer the question of consolidating the said districts to the superintendent of public instruction for his approval: Provided, That a resolution of the board requesting such action by the county superintendent shall have the same effect as such written request by the electors of any district. The superintendent of public instruction shall have authority to approve or deny the proposal to initiate proceedings to effectuate the proposed consolidation, or he may require that 1 or more of such districts be not included in the proposed consolidation. His action in the matter shall be final. If the school districts proposed to be consolidated are located in more than 1 county, the request to initiate consolidation proceedings shall be addressed to the superintendent of the county containing the largest portion of the assessed valuation of the proposed consolidated district, and it then shall become his duty to carry out the proceedings hereinafter assigned to the county superintendent.

HISTORY: New 1955, p. 532, Act 200, Eff. Jul. 1.

340.403 Consolidation of districts; petitions, form, circulation, time, return.

Sec. 403. Within 30 days of the receipt of the approval of the superintendent of public instruction to the consolidation of 2 or more districts, the county superintendent of schools shall have petitions prepared for circulation within the affected school districts. Said petitions shall be printed or duplicated and the first page of any petition shall be in the following form:

Official Petition No. ..... consisting of ..... pages.

Expiration date .....

(Signed) .....

County Superintendent of Schools of ..... County, Michigan.

To the County Superintendent of Schools of ..... County, Michigan.

We, the undersigned, qualified (here insert "registered" in the case of a registration district) electors of .....

(Name of School District)

hereby petition that you cause the question of consolidating the following school districts to be submitted to the school electors of said districts:

Names of school districts to be consolidated to be listed here

Signatures of Petitioners

Name Address Date of Signing

Each additional page of any such petition shall have at or near the top of the page the following:

Official Petition

No. ..... Page No. .....

Expiration date of Petition .....

Signature of County Superintendent of Schools .....

Each page shall have printed or duplicated the following statement below the space for signature for petitioners:

The undersigned hereby certifies that he is a qualified (here insert "registered" in the case of a registration district) elector of .....

.....

(Name of School District)

and that each signature appearing on this page is the genuine signature of the person signing the same and that to his best knowledge and belief each such person was at the time of signing a qualified (here insert "registered" in the case of a registration district) elector of said school district.

Dated this ..... day of ..... 19.....

.....

Each petition shall be signed by the county superintendent of schools as indicated in the foregoing form before being issued to any person for circulation.

Official petitions in the form as above provided shall be given by the county superintendent of schools to any interested elector of any of the districts proposed to be consolidated. Only qualified school electors of the districts in which signatures to the petitions are being sought shall circulate such petitions and the statement appearing below the signatures of petitioners shall be dated or signed on each page before returning such petition to the county superintendent of schools.

Official petitions as above provided shall be returned to the county superintendent of schools on or before the expiration date stated on the petition. The expiration date for filing of petitions shall be the sixtieth day after the receipt by the county superintendent of schools of the last certification by a city or township clerk as to the number of registered general electors residing in each of the affected school districts as hereinafter provided, but in no event shall such expiration date be later than 180 days after the date of approval by the superintendent of public instruction.

HISTORY: New 1955, p. 532, Act 269, Eff. Jul. 1.

340.404 Consolidation of districts; registration of electors.

Sec. 404. Immediately upon receipt of the approval of the superintendent of public instruction to the consolidation of 2 or more districts the county superintendent of schools shall request each appropriate city or township clerk to certify to him the number of registered general electors residing in each of the affected school districts and it shall be the duty of any such city or township clerk to make such certification without delay. The number of registered general electors so certified shall be the basis for determining the required number of signatures for calling an election on the question of consolidation as hereinafter provided. In registration districts, signatures of persons registering after the date of certification by the appropriate city or township clerk shall be valid signatures if such persons are registered at the time of signing a petition: Provided, That such additional registrations shall not affect the number of registered general electors originally certified to by the respective city or township clerks. It is the intent that in registration districts electors in order to be eligible to sign petitions and vote on the question of consolidation shall be registered electors, while in nonregistration districts registration shall not be a required qualification for signing petitions or for voting on consolidation.

HISTORY: New 1955, p. 533, Act 269, Eff. Jul. 1.

340.405 Consolidation of districts; determination of number of qualified electors; superintendent of schools.

Sec. 405. Upon the filing of such petitions with the county superintendent of schools, said county superintendent shall canvass the same to ascertain the number of qualified electors who have signed the same, and, for the purpose of determining the validity of any doubtful signatures, may cause them to be checked against the registration records by the clerk of any political subdivision in which said petitions were circulated or may use any other method he deems proper for determining the validity of such doubtful signatures. In the absence of fraud on the part of the county superintendent in the determination of the validity of the signatures to any petition or error in the determination of the number of qualified signatures, his determination of the number of qualified electors signing each petition shall be final.

HISTORY: New 1955, p. 533, Act 269, Eff. Jul. 1.

340.406 Consolidation of districts; calling of elections, prerequisites.

Sec. 406. Whenever the county superintendent of schools is presented with petitions signed by qualified school electors in each district to the number of not less than 50% of the number of registered general electors, as of the date the county superintendent of schools releases petitions, residing in each district in the case of primary districts, and by school electors of not less than 5% of the number of registered general electors residing in each district in the case of all other districts, he shall cause the question of consolidating the school districts to form a single school district to be submitted to the vote of the electors of the school districts at an election called to be held within 45 days after the receipt of such petitions. No petitions shall be required in the

case of any district operating 12 grades when a resolution adopted by the board of the district requesting consolidation of districts has been filed with the county superintendent of schools. It shall be the duty of any city or township clerk to certify to the county superintendent of schools the number of registered general electors residing in a school district when so requested by the county superintendent.

HISTORY: New 1955, p. 533, Act 269, Eff. Jul. 1;—Am. 1958, p. 834, Act 195, Eff. Sep. 13.

340.407 Consolidation of districts; special election, place.

Sec. 407. The question of establishing a consolidated school district shall be submitted to the school electors at a special election held for such purpose. In voting to form such consolidated school district, each district operating 12 grades shall vote separately as a unit and all other school districts to be included in the consolidation shall vote together as a unit. The board shall conduct the election in each school district operating 12 grades, and the county board of education of the county, the county superintendent of which is required to call the election as herein provided, shall conduct the election for the other districts voting together as a unit: Provided, however, That such elections shall be held on the same day and during the same hours and that whenever any registration district votes separately as herein provided the provisions of chapter 8 of part 2 of this act shall apply, but not when such district votes together with 1 or more other districts.

HISTORY: New 1955, p. 534, Act 269, Eff. Jul. 1.

340.408 Consolidation of districts; notice of special election, contents, posting, publication.

Sec. 408. The county superintendent shall give notice of the date, place or places, the proposition or propositions to be submitted, and the hours the polls will be open for the special election to the electors of the districts operating less than 12 grades, by causing notice thereof to be posted in 3 or more places in such affected districts not less than 10 days prior to such election and by publication at least once in a newspaper of general circulation in the territory of such districts 10 days or more before the election. The county superintendent shall in writing notify the secretary of each board of each affected district operating 12 grades of the day and hours for holding such special election. Upon receipt of such notice, it shall be the duty of each such secretary to give the statutory notice of the day, place or places, and the hours for holding such election and of the last day of registration in the case of a registration district. Each such secretary shall furnish timely proof of giving such notice to the county superintendent in the form of affidavits of posting notice or publication, as the case may be. In the event that a registration district which is required to vote separately is included in the proposed consolidation, the polls in each election unit shall be open from 7:00 o'clock in the forenoon until 8:00 o'clock in the afternoon, and the county superintendent shall give the required notice of the day of the election to the secretary of the board of such registration district at least 35 days prior to the election.

HISTORY: New 1955, p. 534, Act 269, Eff. Jul. 1;—Am. 1959, p. 252, Act 177, Eff. Mar. 19, 1960.

340.409 Consolidation of districts; form of ballot; conduct of election.

Sec. 409. The vote on the question of consolidating shall be by printed ballot and shall be in substantially the following form:

"Shall all of the territory of the following districts be united to form 1 school district?

(Names of school districts to be consolidated to be listed here)

Yes ( )

No ( )"

The intermediate school district superintendent shall supply printed ballots, poll books and other necessary election supplies to the board or boards of election inspectors of the election unit of the districts operating less than 12 grades. The secretary of the board of each school district operating 12 grades shall have printed ballots prepared for the election and supply all election materials necessary for said election. The board of each such district shall appoint the necessary school electors to the board or boards of election inspectors. The members of the intermediate board of education shall act as the board or boards of election inspectors for the election held in the districts operating less than 12 grades. The intermediate board of education may appoint additional persons to the board or boards of election inspectors, and, if more than 1 place for holding such election is designated by the intermediate school district superintendent, the members of the intermediate board of education shall be apportioned by the intermediate school district superintendent to the boards of election inspectors. In the event that a member of the intermediate board of education or such other person appointed to a board of election inspectors is unable to be present at the election or is required to leave during the hours the polls are open, the remaining members of such board of election inspectors may appoint another person to fill such vacancy. Each member of a board of election inspectors shall take the constitutional oath of office before entering on his duties. Elections shall be canvassed by the board of canvassers established by section 514a, this being section 340.514a of the Compiled Laws of 1948, and the result shall be certified by the secretary of the board to the intermediate school district superintendent of schools. In the case of a registration district voting separately and in more than 1 precinct, the secretary of the board of canvassers shall file a certified copy of the canvass of the election by the board with the intermediate school district superintendent. The affirmative vote of a majority of the school electors voting on the question in each of the election units, as hereinbefore defined, shall be necessary to effect the consolidation of the districts, and such consolidation shall become effective as of the day of the election on which the votes were cast.

Compensation of election inspectors, payment of expenses.

The members of the intermediate board of education and such other inspectors of election acting in the election unit of the district or districts operating less than 12 grades shall receive the same compensation for conducting such election as is authorized for election inspectors in a general state election. In the event the consolidation becomes effective, all expenses incurred for the election in all election units shall be certified to the board of the consolidated district and it shall be the duty of said board to pay the same out of the funds of the consolidated district. If the proposition to consolidate fails to be approved, as hereinbefore provided, the intermediate board shall determine the expenses of the election held in the election unit operating less than 12 grades and apportion such expenses equally among the several districts of such election unit. It shall be the duty of each such board of education to pay such apportionment to the intermediate board of education without delay.

HISTORY: New 1955, p. 534, Act 269, Eff. Jul. 1;—Am. 1963, 2nd Ex. Sess., p. 49, Act 30, Imd. Eff. Dec. 27.

340.410 Consolidated district; first board, appointment, acceptance, term, meeting.

Sec. 410. Within 10 days after the effective date of the consolidation of 2 or more school districts, the county board of education of the county containing the territory of the consolidated district shall appoint qualified electors of the district in the number required by the classification of the district to act as a board for said district. When the territory of a consolidated district extends into more than 1 county, such appointment shall be made by the county board of education of each county acting jointly as a single board. Within 7 days after his appointment, each member shall file with the county superintendent an acceptance of the office, accompanied by a written affidavit setting forth the fact of eligibility as provided in section 493 of this act. Except as hereinafter provided, each member so appointed to the board shall hold office until the next annual election, at which time there shall be elected by ballot a new board in accordance with the provisions of chapter 3 or chapter 4 of part 1 of this act for the election of a first board. Within 15 days after the effective date of the consolidation, the county superintendent shall call a meeting of the board appointed by the county board of education, at which meeting the board shall elect a president, a secretary and a treasurer.

District election; salaries of board members.

If the effective date of the consolidation is between the thirtieth day prior to the annual election and December 31, the board appointed by the county board shall at its first meeting call a district election to be held within 45 days from the day of the meeting. At the election, a board of the requisite number of members shall be elected for such terms as are required for the election of a first board in section 55 or section 107 of this act. The salaries of the members of the board shall be determined by the electors of the district at such election in accordance with section 71 or section 112. The election shall be in lieu of the first annual election and the first year of each term of office shall extend until the date of taking office following the next succeeding annual election. The board shall hold its first meeting and elect officers as provided in section 57 or section 111 of this act.

HISTORY: New 1955, p. 535, Act 269, Eff. Jul. 1;—Am. 1963, p. 438, Act 248, Imd. Eff. Jun. 13.

340.411 Consolidated district; transfer of records, funds, property of original districts.

Sec. 411. Within 20 days after the effective date of the consolidation of 2 or more districts, the board of each of the original districts shall account to the board of the consolidated district for all records, funds and property belonging to said original district and shall turn over the same to the board of the consolidated district. Upon receipt of such records, funds and property by the board of the consolidated district, the officers of the original district or districts shall be released from liability therefor and their offices terminated.

HISTORY: New 1955, p. 535, Act 269, Eff. Jul. 1.

340.412 Consolidated district; indebtedness of original district, retirement.

Sec. 412. If any district becoming part of the consolidated district has a bonded indebtedness incurred after December 8, 1932, or has outstanding tax anticipation notes at the time of consolidation, the identity of such district shall not be lost by virtue of such consolidation and its territory shall remain as an assessing unit for purposes of such bonded indebtedness and such tax anticipation notes until such indebtedness has been retired or the outstanding bonds refunded by the consolidated district. The board of the consolidated district shall constitute the board of trustees for such original district having such bonded indebtedness or tax anticipation notes and the officers of the consolidated district shall be the officers for said original district. The board of the consolidated district shall certify and order the levy of taxes for such bonded indebtedness and tax anticipation notes in the name of the original district, shall not commingle the debt retirement funds of the original district with funds of the consolidated district, and shall do all things relative to such bonded indebtedness and tax anticipation notes required by law and by the terms under which the issue and sale of the bonds and tax anticipation notes were originally authorized. All other tax levies for the purposes of the consolidated school district shall be spread over the entire area of the consolidated district.

HISTORY: New 1955, p. 536, Act 269, Eff. Jul. 1;—Am. 1969, p. 298, Act 146, Imd. Eff. Jul. 31.

340.413 Consolidated district; assumption of indebtedness.

Sec. 413. Any time after 3 years following the consolidation, any consolidated district may assume the obligation of the bonded indebtedness incurred after December 8, 1932, of any original district becoming a part of the consolidation and pay the same from the proceeds of a debt retirement tax levy spread uniformly over the territory of the consolidated district whenever the electors of the consolidated district shall have approved an increase in the limitation on taxes for that purpose and the school tax electors of the district have approved the assumption of such bonded indebtedness. Assumption of such bonded indebtedness of an original school district shall not operate to release the territory of the original district for the final responsibility of paying the obligation or to rescind the increase in the limitation on taxes pledged to the bond issue or available for it in the original district, nor be construed as so doing. When the bonded indebtedness of an original district has been so assumed, it shall be the duty of the board of the consolidated district to certify and order the levy of taxes for such bonded indebtedness equivalent in terms of money to those required by the terms under which such indebtedness was originally incurred, and carry out all provisions of the original bond contract. The election may be held at any time following the effective date of consolidation whenever a proposal is made to increase the bonded indebtedness of the combined district.

HISTORY: New 1955, p. 536, Act 269, Eff. Jul. 1;—Am. 1957, p. 154, Act 135, Eff. Sep. 27;—Am. 1960, p. 252, Act 177, Eff. Mar. 19, 1960.

340.414 Consolidated district; simultaneous election on consolidation, increase of constitutional debt limits, assumption of outstanding bonded indebtedness; petition, procedure.

Sec. 414. Whenever the petitions filed with the county superintendent of schools as set forth in section 403 of this act include a request that the questions of increasing the constitutional limitation on taxes of the consolidated school district for the purpose of providing a debt levy for the bonded indebtedness incurred after December 8, 1932, of 1 or more of the districts to become part of the consolidation and of assuming such bonded indebtedness and the question of increasing the constitutional limitation on taxes of the consolidated school district for operating purposes be submitted to the electors at the time of voting to form the consolidation, it shall be the duty of the county superintendent to include such question for the vote of the electors at each of the election units provided in section 407 of this act. The statement of votes cast on these questions shall be certified to the county superintendent by each board of election inspectors, including those of a district voting in more than 1 precinct: Provided, That only school tax electors shall be permitted to vote on the question of assuming such bonded indebtedness. The county board of education shall meet within 3 days after the day of the election and canvass the statements filed by the various election boards. The county board shall by resolution declare the result of the election on these questions and this resolution shall be the official declaration of the result thereof. The propositions shall be declared to have been adopted if the canvass of the votes cast shows that a majority of all electors voting on each proposition voted in the affirmative: Provided, That the proposition of forming the consolidation was adopted at said election as hereinbefore set forth. The proposition to form a consolidated district shall be declared to have failed regardless of the vote thereon if the proposition to increase the limitation on taxes for the debt levy, the proposition to assume such bonded indebtedness or the proposition to increase the limitation on taxes of the consolidated school district for operating purposes was not approved at said election.

Approval of municipal finance commission; form of request for increase of debt limits and consolidation.

The approval of the municipal finance commission to the sufficiency of the proposed increase in the limitation on taxes shall first be secured before the petitions are circulated within the districts to be consolidated. Whenever the electors approve a consolidation and an increase in the limitation of taxes and the assumption of the bonded indebtedness of 1 or more of the original districts as herein provided, the consolidated district shall assume the obligation of such bonded indebtedness and shall pay the same by spreading a debt retirement tax uniformly over the territory of the consolidated district, and the provisions of section 413 of this act shall apply relative to such levy, the continuing obligations of such original district or districts, and the rights and remedies of any bondholder. The request for including the question of increasing the constitutional limitation on taxes of the consolidated school district for the purpose of providing a debt levy for the bonded indebtedness incurred after December 8, 1932, of 1 or more of the districts to become part of the consolidation and for assuming such bonded indebtedness by the consolidated district shall be stated on the petition after the names of the school districts to be consolidated, as set forth in section 403 of this act, in substantially the following form:

"We petition that the question of increasing the constitutional limitation on taxes which may be assessed against all property in the consolidated school district to be formed as herein petitioned be increased by ..... mills for a period of ..... years, 19.... to 19...., inclusive, for the purpose of paying the bonded indebtedness of .....

(Name of School District or Districts)

and the question of assuming and paying such bonded indebtedness by the proposed consolidated district, and

We further petition that the question of increasing the constitutional limitation on taxes which may be assessed against all property in the consolidated school district to be formed as herein petitioned be increased by ..... mills for a period of ..... years, 19.... to 19...., inclusive, for operating purposes, be submitted to the electors at the same election in which the question of consolidating the above districts is submitted."

HISTORY: New 1955, p. 536, Act 269, Eff. Jul. 1;—Am. 1963, p. 438, Act 248, Imd. Eff. Jun. 13.

340.414b Consolidated district; increase of constitutional debt limits, assumption of outstanding bonded indebtedness; petition.

Sec. 414b. When the county superintendent of schools shall find that all the requests in writing or the resolutions of the board or boards which he has received under the provisions of section 402 of this act request that the provisions of section 414 be included with the question of consolidation, then the county superintendent of schools shall cause to have the petitions provided in section 403 include these provisions.

HISTORY: Add. 1956, p. 463, Act 215, Imd. Eff. May 1.

340.415 Consolidated districts; bonded debt of original district not subject to tax limitation, approval by school tax elector.

Sec. 415. The authority and procedures prescribed in this chapter for the assumption of bonded indebtedness of districts proposing consolidation shall apply to the assumption by the consolidated district of any bonded debt of the original districts which is not subject to the constitutional limitation on taxes: Provided, however, That the question of increasing the tax limitation in respect to such unlimited tax bonded debt shall not be included in the petitions for consolidation, nor shall the school electors be required to approve an increase in the tax limitation in respect to such debt. The assumption of such unlimited tax bonded debt shall be approved by the school tax electors at the time of the consolidation election or at any time after 3 years following the consolidation.

HISTORY: Add. 1956, p. 463, Act 215, Imd. Eff. May 1.

CHAPTER 6.

BOARDS OF EDUCATION; TERMS OF OFFICE; ELIGIBILITY; ACCEPTANCE; VACANCIES; FILLING OF VACANCIES.

340.491 Board of education; members, term of office.

Sec. 491. The terms of office of all members of boards of education shall commence on July 1 and continue until their successors are elected and qualified.

HISTORY: New 1953, p. 543, Act 269, Eff. Jul. 1;—Am. 1961, p. 30, Act 29, Imd. Eff. May 12.

CHAPTER 9.

BOARDS OF EDUCATION—GENERAL POWERS AND DUTIES.

340.561 Board of education; public meetings, record, temporary officers.

Sec. 561. All business which the board of any district is authorized to perform shall be done at a public meeting of the board and no act shall be valid unless voted at a meeting of the board by a majority vote of the members elect of the board and a proper record made of the vote. A meeting in which all members are present, with or without proper notice, shall be considered a legal meeting for the transaction of business. Meetings of the board shall be public meetings and no person shall be excluded therefrom. The board may hold executive sessions, but no final action shall be taken at any executive session. The minutes of all board meetings must be signed by the secretary. In the absence of the secretary in any meeting, the president shall appoint a temporary secretary who shall sign the minutes of the meeting. In the absence of the president, the other members present shall elect a temporary president.

HISTORY: New 1955, p. 549, Act 269, Eff. Jul. 1;—Am. 1959, p. 355, Act 240, Eff. Mar. 19, 1960;—Am. 1961, p. 257, Act 181, Eff. Sep. 1

340.562 Board of education; public records, inspection.

Sec. 562. The board of every district shall purchase a record book and such other books, blanks and stationery as may be necessary to keep a record of the proceedings of the board, the accounts of the treasurer, and for doing the business of the district in an orderly manner. All records of the board shall be public records and subject to inspection under section 750.492 of the Compiled Laws of 1948.

HISTORY: New 1955, p. 550, Act 269, Eff. Jul. 1;—Am. 1959, p. 355, Act 240, Eff. Mar. 19, 1960.

340.563 Board of education; taxes, levy.

Sec. 563. The board of every district shall vote to levy such taxes as may be necessary for all school operating purposes, which shall include but not be limited to school furnishings and all appurtenances, the care of school property for such alterations as shall be necessary to place the school house in a safe and sanitary condition, teachers' and employees' wages, water supply, premium upon indemnity bond for the treasurer of the district, tuition and transportation of the pupils, record books and blanks, and all apparatus, equipment and material which may be necessary in order that the schools may be properly managed and maintained, and for the deficiencies in operating expenses for the preceding year, if any.

HISTORY: New 1955, p. 550, Act 269, Eff. Jul. 1.

340.564 Board of education; taxes; secretary's certificate to clerks.

Sec. 564. The secretary of the board of every school district shall file a certified copy of a resolution of the board certifying the taxes to be levied on the taxable property within the district as approved by the electors of the district or the board with the city and township clerk of each city and township in which the territory of the district is situated on or before September 1 of each year or within 10 days after the annual meeting if held in September.

HISTORY: New 1955, p. 550, Act 269, Eff. Jul. 1;—Am. 1959, p. 48, Act 46, Eff. Sep. 13;—Am. 1960, p. 138, Act 123, Eff. Aug. 17.

340.566 Board of education; money, payment, use.

Sec. 566. No money raised by tax shall be used for any other purpose than that for which it was raised without the consent of a majority of the school tax electors of the district voting on the question at an annual or special meeting or election, and no moneys received from the primary school fund shall be appropriated for any other use than the payment of teachers' wages, tuition and transportation of children, as provided by law.

HISTORY: Nov 1850, p. 850, Act 269, Eff. Jul. 1.

340.567 Board of education; borrowing power, tax collection.

Sec. 567. The board of education of any district may borrow money in anticipation of the collection of taxes in accordance with Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 138.2, inclusive, of the Compiled Laws of 1948, in force or as the same may hereafter be amended.

HISTORY: Nov 1955, p. 550, Act 280, Eff. Jul. 1.

340.567a Board of education; borrowing powers; school operation; repayments; notes, issuance, due dates, interest, limitations; certificate of approval; validity of note.

Sec. 567a. Subject to the restrictions prescribed in this section, the board of education of any school district may borrow money and issue its note or notes therefor, for the purpose of securing funds for school operations or for the payment of previous loans made for school operations under this or any other statute, and for the payment of the note or notes hereunder shall pledge moneys to be received by it from the state school aid fund. Any such notes shall be the full faith and credit obligations of the school district and shall be payable from tax levies or from any unencumbered funds of the school district in event of the unavailability or insufficiency of state aid funds for any reason, including the invalidity of any statute pertaining thereto. Notes issued under this section shall become due on or before September 1 immediately following the fiscal year in which they are issued, except as hereinafter provided. Notes from time to time issued in any fiscal year shall not exceed 100% of the difference between the total state aid funds apportioned to the school district for such fiscal year and the portion thereof already received or pledged, provided that during the last 3 months of any fiscal year additional notes may be issued pledging state aid funds for the next fiscal year. Such additional notes shall not exceed 15% of the state aid funds apportioned to the school district for the next fiscal year or if such apportionment has not yet been made, then 15% of the apportionment for the then current fiscal year, which additional notes shall mature not later than November 1 immediately following their issuance. Notes issued under this section shall bear interest at not to exceed 6% per annum and may be made redeemable prior to maturity on such terms and conditions as shall be provided in the notes. The issuance of notes under this act shall not be subject to the provisions of Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 138.2 of the Compiled Laws of 1948. No notes shall be issued for borrowing under the provisions of this act without the prior approval of the superintendent of public instruction, for which approval application shall be made by the school district.

The superintendent of public instruction shall issue a certificate of approval which shall show the amount fixed as the state appropriation allocated to the school district for the present and, if applicable, for the next succeeding fiscal year and any payments distributed to the school district prior to the date of the certificate. The failure of any school district to receive any state appropriation shall not affect the validity or enforceability of any note issued under this section. A school district may make more than 1 borrowing under this section during any school year. No school district shall contest the validity of any note issued by it under this section if it has received permission from the superintendent of public instruction to issue the same and has received the principal amount of the note. No school district shall make any new borrowing under section 26 of Act No. 312 of the Public Acts of 1957, as amended, being section 388.636 of the Compiled Laws of 1948, while this section is in effect.

HISTORY: Add. 1969, p. 536, Act 316, Eff. Nov. 15;—Am. 1969, p. 896, Act 146, Imd. Eff. Jul. 31.

340.569 Teacher's contracts; contents, filing, termination.

Sec. 569. The board of every district shall hire and contract with such duly qualified teachers as may be required. All contracts with teachers shall be in writing and signed by a majority of the board in behalf of the district, or by the president and secretary, or by the superintendent of schools or his designee when so directed at a meeting of the board. The contracts shall specify the wages agreed upon and in primary school districts shall require the teacher to keep a correct list of the pupils, grading and the age of each, attending the school, and the number of days each pupil is present, the aggregate attendance and percentage of attendance, and to file the same with the superintendent of the intermediate district and a true copy thereof with the secretary of the board at the end of the school year, and no teacher shall be entitled to receive his last payment for his services until the report shall be filed. The contract shall be filed with the secretary and a duplicate copy of the contract shall be furnished to the teacher. No contract with any person shall be valid unless such person shall hold a legal certificate of qualification at the time the contractual period shall begin, and all such contracts shall terminate if the certificate shall expire by limitation and shall not immediately be renewed, or it shall be suspended or revoked by proper legal authority. Any board after a teacher has been employed at least 2 consecutive years by the board may enter into a continuing contract with such teacher if the teacher holds a permanent or life certificate. A continuing contract is a contract which shall remain in full force and effect, as provided in the rules and regulations of the board, until the teacher resigns, elects to retire, is retired, or is dismissed for reasonable and just cause after a fair hearing.

HISTORY: Now 1955, p. 551, Act 269, Eff. Jul. 1;—Am. 1965, p. 15, Act 14, Eff. Mar. 31, 1965.

340.569a Purchase of annuity, contract; payroll deduction, retroactive effect.

Sec. 569a. At the request of an employee and as part of his compensation arrangement, the board of education of any school district may purchase an annuity contract for an employee for retirement or other purposes and may make payroll allocations in accordance with such arrangement for the purpose of paying the entire premium due and to become due under the annuity contract. The allocation shall be made in a manner which will qualify the annuity premiums, or a portion thereof, for the benefit afforded under section 403 (b) of the current federal internal revenue code or any equivalent provision of subsequent federal income tax law. The employee shall own the

annuity contract and his rights thereunder shall be nonforfeitable except for failure to pay premiums. The board of education shall have no liability thereunder because of its purchase of any annuity contracts. This section shall be applied in a nondiscriminatory manner to employees of the school district. Its effect shall be retroactive to October 1, 1961.

HISTORY: Add. 1963, p. 440, Act 248, Imd. Eff. Jun. 13.

340.569b Teachers' contracts; termination; substitution of new contract, effect.

Sec. 569b. At any time, the board of any district, by agreement between the board and a teacher or by agreement between the board and any organization representing the teacher in accordance with Act No. 176 of the Public Acts of 1939, as amended, being sections 423.1 to 423.30 of the Compiled Laws of 1948, may terminate an existing contract for the services of the teacher and substitute a new contract which provides an increased benefit to the teacher. The new contract shall be binding without regard to any preexisting duties or obligations of either the school board or the teacher under the first contract.

HISTORY: Add. 1966, p. 106, Act 82, Eff. Mar. 10, 1967.

340.569c School building principals; employment; duties.

Sec. 569c. Boards of education may employ an administrator or administrators, usually called building principals, and who shall:

(a) Supervise the operation and management of the school or schools and property as the board determines for the building principals.

(b) Be assigned administrative responsibilities and coordinate instructional leadership, under the supervision of the superintendent, for the planning, management, operation and evaluation of the educational program and services.

(c) Submit recommendations to the superintendent for the appointment, assignment, promotion or dismissal of all personnel assigned to his supervision.

HISTORY: Add. 1970, p. 661, Act 248, Imd. Eff. Dec. 30.

340.573 Superintendent of schools; qualifications, waiver.

Sec. 573. Before any person may be employed as a superintendent of schools of any school district, he shall possess at least an earned bachelor's degree from a college acceptable to the state board of education and be the possessor of or be eligible for a teacher's certificate or have educational qualifications equivalent thereto in accordance with standards determined by the state board of education: Provided, That said state board may waive the requirements of this section for any person employed as superintendent of schools for the school year 1951-1952, and subsequent years while he continues in such capacity for the same school district.

HISTORY: New 1955, p. 552, Act 269, Eff. Jul. 1.

340.574 Assistants, employees; duties, compensation.

Sec. 574. Every board may employ such assistants and employees as may be necessary and prescribe their duties and fix their compensation.

HISTORY: New 1955, p. 552, Act 269, Eff. Jul. 1.

340.575 Length of school term; determination, minimum; certification; deduction of state aid; rules.

Sec. 575. The board of every district shall determine the length of the school term. The minimum number of days of student instruction shall be not less than 180. Any district failing to hold 180 days of student instruction shall forfeit 1/180th of its total state aid appropriation for each day of such failure. Not later than August 1, the board of every district shall certify to the department of education the number of days of student instruction in the previous school year. If the district did not hold at least 180 days of student instruction, the deduction of state aid shall be made in the following fiscal year from the first payment of state aid. Days lost because of strikes or teachers conferences shall not be counted as a day of student instruction. The state board of education shall establish rules for the implementation of this section.

HISTORY: New 1955, p. 552, Act 269, Eff. Jul. 1;—Am. 1967, p. 351, Act 237, Eff. Nov. 2.—Am. 1970, p. 165, Act 72, Imd. Eff. Jul. 11.

340.576 Sites, buildings; purchase, lease.

Sec. 576. No board shall build a stone or brick schoolhouse upon any site without first having obtained title in fee to the same, or a lease for a period of not less than 99 years, or unless it shall have obtained a lease for a period of not less than 50 years from the United States government or the state of Michigan, or a political subdivision thereof; nor shall any board build a frame schoolhouse on any site for which it does not have a title in fee or a lease for 50 years without securing the privilege of removing the schoolhouse.

HISTORY: New 1955, p. 552, Act 269, Eff. Jul. 1.

340.576a Building sites; urban renewal program.

Sec. 576a. The board of any school district may become a participating member with other units of government and spend building and site funds for the purpose of acquiring a schoolhouse site or an addition of territory to a schoolhouse site through an urban renewal program.

HISTORY: Add. 1962, p. 100, Act 111, Imd. Eff. Apr. 30.

340.576b Real and personal property acquisition; restriction. [M.S.A. 15.3576(2)]

Sec. 576b. (1) The board of any school district, including any district governed by any special or local act, may acquire any real or personal property for use for school purposes by purchase, land contract, lease, with or without option to purchase, or title retaining contract. Any such district may pay for the same out of any funds of the district which are or may become lawfully available for these purposes. The outstanding balance of all such acquisitions, exclusive of interest, shall not exceed 1¼% of the equalized assessed value of real and personal property in such school district.

340.576c Equipment; purchase, rental; payment; contract.

Sec. 576c. The board of any school district, including any school district governed by any special or local act, may acquire by purchase, lease or rental, with or without option to purchase, any equipment necessary for the operation of the school program, including heating, water heating and cooking equipment for school buildings, and may pay for such equipment from operating funds of the district. All heating and cooking equipment may be purchased on title retaining contracts, chattel mortgages, or other form of agreement creating a security interest and pledging in payment moneys in the general fund or funds received from the state for aid in support of the public schools. Such contracts shall not be entered into or issued for a longer period than 10 years.

HISTORY: Add. 1965, p. 441, Act 283, Imd. Eff. Jul. 21;—Add. 1965, p. 739, Act 375, Imd. Eff. Jul. 23;—Am. 1967, p. 157, Act 118, Imd. Eff. Jun. 27.

340.578 School property; custody, preservation; school management; rules, regulations.

Sec. 578. Every board shall have the general care and custody of the schools and property of the district and make and enforce suitable rules and regulations for the general management of the schools and the preservation of the property of the district.

HISTORY: New 1955, p. 553, Act 269, Eff. Jul. 1.

340.582 Nonresident pupils; tuition, per capita cost.

Sec. 582. The board of any district may admit to the district school nonresident pupils and shall determine the rates of tuition of such pupils and shall collect the same. Tuition for grades kindergarten to 6, inclusive, shall not exceed 25% more than the operation cost per capita for the number of pupils in membership in grades kindergarten to 12, inclusive. Tuition for grades 7 to 12, inclusive, shall not exceed 12 ½% more than 115% of the operation cost per capita for the number of pupils in membership in grades kindergarten to 12, inclusive. In districts not maintaining grades above grade 8, the tuition shall not exceed 25% more than the operation cost per capita for the number of pupils in membership in grades kindergarten to 8, inclusive. The operation costs and membership so used shall be those of the preceding fiscal year. The per capita cost herein referred to shall not be interpreted to include moneys expended for school sites, school building construction, equipment, payment of bonds, or such other purposes as shall be determined by the superintendent of public instruction not properly included in operation costs.

HISTORY: New 1955, p. 553, Act 269, Eff. Jul. 1;—Am. 1958, p. 835, Act 195, Eff. Sep. 13.

340.583 Grades, schools, departments; courses of study.

Sec. 583. Every board shall establish and carry on such grades, schools and departments as it shall deem necessary or desirable for the maintenance and improvement of the schools; determine the courses of study to be pursued and cause the pupils attending school in such district to be taught in such schools or departments as it may deem expedient: Provided, That a primary district shall not operate any grades above the eighth.

HISTORY: New 1955, p. 554, Act 269, Eff. Jul. 1.

340.589 Attendance areas.

Sec. 589. Every board is authorized to establish attendance areas within the school district.

HISTORY: New 1955, p. 554, Act 269, Eff. Jul. 1.

340.594 Buses; purchase, pledge of state aid, regulations.

Sec. 594. The board of any district furnishing transportation may purchase buses on title-retaining contracts or by the issuance of obligations of the district therefor, pledging in payment moneys in the general fund or funds received from the state for aid in the support of the public schools: Provided, That such obligations issued for this purpose shall not be issued for a longer time than the estimated period of usefulness of the buses for which issued, as determined by the board, and in no event for a longer period than 6 years.

HISTORY: New 1955, p. 555, Act 269, Eff. Jul. 1.

340.605 Scholarships; educational purposes; gifts, custodian, bond.

Sec. 605. The board of any school district, except a primary school district, is hereby authorized to receive, by assignment, conveyance, gift, devise or bequest, any real or personal property or any interest therein, for use in maintaining scholarships or for other educational purposes, and such board may act as trustee or custodian of such property. Such property shall be used by the board solely for the educational purposes for which it was assigned, conveyed, given, devised or bequeathed, whether by way of trust or otherwise. The treasurer of the board is authorized, when required, to give bond to insure proper administration of such property.

HISTORY: New 1955, p. 557, Act 269, Eff. Jul. 1.

340.609 Board of education; attorney, employment.

Sec. 609. The board shall have authority to employ an attorney to represent the school district or board in all suits brought for or against the district, and to render such other legal service as may be for the welfare of the school district.

HISTORY: New 1955, p. 557, Act 269, Eff. Jul. 1.

340.613 Expulsions of children; handicapped, evaluating. [M.S.A. 15.3613]

Sec. 613. The board may authorize or order the suspension or expulsion from school of a pupil guilty of gross misdemeanor or persistent disobedience when in its judgment the interests of the school may demand it. If there is reasonable cause to believe that the pupil is handicapped, and the local school district has not evaluated the pupil in accordance with rules of the state board, the pupil shall be evaluated immediately by the intermediate district of which the local school district is constituent in accordance with section 298c.

340.614 Board of education; duties, rules, safety of pupils in attendance or en route.

Sec. 614. Every board shall have authority to make reasonable rules and regulations relative to anything whatever necessary for the proper establishment, maintenance, management and carrying on of the public schools of such district, including regulations relative to the conduct of pupils concerning their safety while in attendance at school or en route to and from school.

HISTORY: New 1955, p. 558, Act 269, Eff. Jul. 1.

340.615 School taxes; budgets; property tax limitation act.

Sec. 615. School taxes shall be assessed, levied and collected as provided in Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 to 211.157, inclusive, of the Compiled Laws of 1948. Budgets shall be submitted and school districts shall be governed by the provisions of the property tax limitation act, Act No. 62 of the Public Acts of 1933, as amended, being sections 211.201 to 211.217, inclusive, of the Compiled Laws of 1948.

HISTORY: New 1955, p. 558, Act 269, Eff. Jul. 1.

CHAPTER 14.

CONDEMNATION OF SCHOOL SITES AND ADDITION TO SCHOOL SITES.

340.711 Condemnation proceedings; prima facie evidence of necessity.

Sec. 711. Whenever a site for a schoolhouse or schoolhouses, agricultural sites, athletic fields and playgrounds shall be designated, determined, established or enlarged in the manner provided by law and the board shall be unable to agree with the owner or owners of such site upon the compensation to be paid therefor, or for the land to enlarge the same, or in case such board shall, by reason of any imperfection in the title of said site or land to be added thereto, arising either from break in the chain of title, tax sale, mortgages, levies or any other cause, be unable to procure a perfect, unencumbered title in fee simple to said site, or land for the enlargement thereof, the board of such district shall authorize 1 or more of its members to apply to the circuit judge, if there be one in the county, or to a circuit court commissioner of the county for a jury to ascertain and determine the just compensation to be made for the real estate required by such school district for such site, or for the enlargement thereof, and the necessity for using the same, which application shall be in writing and shall describe the real estate required by such board or by such district as accurately as is required in a conveyance of real estate: Provided, That whenever the board shall have designated, selected or established in a manner provided by law a schoolhouse site or land for the enlargement thereof, such selection, designation or establishment shall be prima facie evidence to said jury of the necessity to use the site so established.

HISTORY: New 1955, p. 563, Act 269, Eff. Jul. 1.

[No. 70.]

An Act relative to free schools in the city of Detroit.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Michigan*, That the city of Detroit shall be considered as one school district, and hereafter all schools organized therein, in pursuance of this act, shall, under the direction and regulations of the board of education, be public and free to all children residing within the limits thereof, between the ages of five and seventeen years, inclusive.

Sec. 18. This act shall take effect from and after its passage.
Approved February 17, 1842.

PUBLIC ACTS 1969—No. 244.

388.171 First class school district; division. [M.S.A. 15.2298(1)]

Sec. 1. Not later than January 30, 1970, the school board of each first class district shall divide its district into not less than 7 nor more than 11 regional school districts with not more than 50,000 nor less than 25,000 students in each district.

388.172 Same; board; regional members; present members, term. [M.S.A. 15.2298(2)]

Sec. 2. In addition to the present members of the first class board there shall be elected by the registered and qualified electors of each district to the first class board a member from each of the districts for a term of 4 years. The members of the first class school district board provided in section 2 to be elected by regions shall be elected in the general election to be held in November, 1970 and every fourth year thereafter for a term commencing on January 1 next following their election. The candidates shall be nominated in primary elections in the manner provided by law for the present first class school district members.

The term of office of the present first class school board members shall hereafter be 4 years. The terms of office of present first class school board members which expire June 30, 1971 are extended to January 1, 1973. The term of office of present first class school board members which expire June 30, 1973 are shortened to January 1, 1973. The 5 at large positions on the first class district school board which expire January 1, 1973 shall be filled at the general election to be held in November, 1972 for a term of 4 years. The terms of office of present first class school district board members which expire on June 30, 1975 are extended to January 1, 1977 and shall be filled at the general election to be held in November, 1976 for a term of 4 years.

388.173 Regional boards; size; qualifications; election; term. [M.S.A. 15.2298(3)]

Sec. 3. In each regional district there shall be elected 9 members to the regional board. No person shall be elected who is not a resident of the regional district from which he is elected. The members shall be nominated and elected by the registered and qualified electors of each district as is provided by law for the nomination and election of first class school board members except that signatures required on nominating petitions shall be not less than 500 nor more than 1,000. The members shall be elected for terms of 4 years. Except that of the members elected at the general election in 1970 the 5 members receiving the highest number of votes shall be elected for a term of 4 years and the 4 members receiving the next highest number of votes shall be elected for a term of 2 years.

388.174 First class district board, powers. [M.S.A. 15.2298(4)]

Sec. 4. The first class school district board shall retain all the powers and duties now possessed by a first class school district except for those given to a regional school district board under the provisions of this act.

388.175 Regional board, powers. [M.S.A. 15.2298(5)]

Sec. 5. Effective upon the commencement of its term of office, the regional school district board, subject to guidelines established by the first class district board, shall have the power to:

(1) Employ and discharge a superintendent for the regional school district from a list or lists of candidates submitted by the district board.

(2) Employ and discharge, assign and promote all teachers and other employees of the regional school district, subject to review by the first class school district board, which may overrule, modify or affirm the action of the regional district board.

(3) Determine the curriculum, use of educational facilities and establishment of educational and testing programs in the regional school district.

(4) Determine the budget for the regional school district based upon the allocation of funds received from the first class school district board.

388.176 Employee rights. [M.S.A. 15.2298(6)]

Sec. 6. The rights of retirement, tenure, seniority and of any other benefits of any employee transferred to a regional school district or between regional school districts from the first class district shall not be abrogated, diminished or impaired.

388.177 First class district board, functions. [M.S.A. 15.2298(7)]

Sec. 7. The first class school district board shall perform the following functions for the regional school districts:

(1) Central purchasing.

(2) Payroll.

(3) Contract negotiations for all employees, subject to the provisions of Act No. 336 of the Public Acts of 1947, as amended, being sections 423.201 to 423.216 of the Compiled Laws of 1948, and subject to any bargaining certification and to the provisions of any collective bargaining agreement pertaining to affected employees.

(4) Property management and maintenance.

(5) Bonding.

(6) Special education programs.

(7) Allocation of funds for capital outlay and operations to each regional school district.

(8) On or before November 1, 1970, establish guidelines for the implementation of the provisions of section 5.

1970 PA 48, amending 1969 PA 244

388.171a First class school district; board of education, composition. [M.S.A. 15.2298(1a)]

Sec. 1a. On or after January 1, 1971, in any first class school district with more than 100,000 student membership, the board membership of the board of education shall be composed of 8 members determined and elected as provided in section 2a plus 5 members determined and elected as provided in section 3a.

388.172a Regions, description, approval; boundary commission; redetermination. [M.S.A. 15.2298(2a)]

Sec. 2a. Immediately following the effective date of this 1970 amendatory act or any date on which a school district becomes a first class school district, 8 regions shall be described in each such first class school district by resolution concurred in by three-fourths of the members elected and serving in each house of the legislature and such regions so described shall be established as regions if and when approved by the superintendent of public instruction. If a concurrent resolution shall not be approved by three-fourths of such members within 7 days of the effective date of this amendatory act or within 30 days of any date on which a school district becomes a first class school district a first class district boundary commission consisting of 3 members appointed by the governor shall determine the boundary lines of such regions within 21 days thereafter if in 1970 or within 30 days thereafter if in any later year. The members of the commission shall receive a compensation of $100.00 per diem per member from the funds appropriated to the department of education. The boundary lines of such regions shall be redetermined by the respective boards of such first class school districts following each federal decennial census but in no event later than April 15 of the first odd numbered year in which regional board members are to be elected following the federal decennial census. In the event of the failure of such respective boards of such first class school districts to redetermine such regional boundary lines by such April 15, the state board of education shall convene within 10 days to make such redetermination and such redetermination of the state board of education shall be the regional boundary lines until the redetermination is made following the next succeeding federal decennial census as provided in this section. Regions shall be as compact, contiguous and nearly equal in population as practicable.

Regional board; size; election; qualification; term.

Within each region, there shall be a regional board consisting of 5 members. The members shall be nominated and elected by the registered and qualified electors of each district as is provided by law for the nomination and election of first class school board members except that signatures required on nominating petitions shall be not less than 500 nor more than 1,000. Any candidate properly filed for any educational position in any first class school district as of the effective date of this act shall be considered as a qualified candidate under sections 2a and 3a for the 1970 election provided such candidate makes a request, designation and selection to the election officer empowered by law to accept nominating petitions for such office. No person shall be elected who is not a resident of the region from which he is elected. The members shall be elected in the general election to be held in November, 1970 and November of 1973 and every 2 years thereafter commencing in 1975.

Election; chairman; vacancy.

In the year 1970 regional board members shall be elected in the November general election and candidates for such office shall not be subject to the primary election. In 1970 a person may qualify as a candidate for the election for regional board member by filing the required number of signatures on or prior to 4 p.m., August 18, 1970. In 1970 signatures of registered electors of the first class district shall be valid without regard to the place of residence of such registered elector. In any year the candidate for regional board member receiving the highest number of votes in each region in the November general election shall be chairman of the regional board and a member of the board of education of his first class school district during his term of office. In case a vacancy occurs for any reason in the combined position of chairman of the regional board and member of the first class school district board of education, the regional board member who received the next highest number of votes in the preceding general election shall assume such combined position. The number of members of each regional board shall be maintained at 5 and vacancies shall be filled from among residents of the region by the remaining board members of such region by a majority vote of those serving. No vacancies shall be filled later than 60 days prior to a primary election at which regional board members are to be nominated. The 5 regional board members elected in each region shall commence their terms of office on January 1 following the election and the members shall serve until their successors are elected and qualified.

388.173a District board; at large members. [M.S.A. 15.2298(3a)]

Sec. 3a. Effective January 1, 1971 there shall be 5 members on the boards of first class school districts elected at large. Members of such boards shall be nominated and elected at the primary and general elections of 1972 and 1974 for 3-year terms commencing on January 1 of the subsequent odd numbered year, 2 each to be elected in 1972 and 1974. In the year 1970 1 board member shall be elected in the November general election for a 3-year term commencing January 1, 1971 and candidates shall not be subject to the primary election. In 1970 a person may qualify as a candidate for the election for first class school district board member by filing nominating petitions containing not less than 500 nor more than 1,000 valid signatures on or before 4 p.m., August 18, 1970. Commencing in 1973 and in all subsequent odd numbered years, a number of board members equivalent to the number of members whose terms expire on December 31 of such year will be nominated and elected at the primary and general election. Such members so elected shall serve 2-year terms commencing on January 1 of the subsequent even numbered year. To accomplish the provisions of this amendatory act the terms of office of any first class district board members whose terms expire prior to December 31, 1971 shall expire December 31, 1970; the terms of office of such board members whose terms expire between January 1, 1972 and December 31, 1973 shall expire December 31, 1972 and the terms of office of such board members whose terms expire between January 1, 1974 and December 31, 1975 shall expire December 31, 1974.

Officers; recall petitions; term of office.

In any year in which one or more board members of a first class district are commencing a term of office on January 1 the board of such first class district shall redetermine its

selection of officers during the month of January of such year. Petitions to recall any member or members of the board of education of a first class school district filed and pending before this act becomes effective, or becomes operative in a school district that hereafter becomes a first class school district, may be withdrawn by the person or organization filing or sponsoring such recall petitions within 10 days after this act becomes effective or 20 days after the act becomes operative in any school district that hereafter becomes a first class school district. Board members of first class school districts who are recalled in accordance with law may be candidates for the same office at the next election for such office at which the recalled member is otherwise eligible. In the case of any school district that hereafter becomes a first class school district, the term of office of each of the board members then serving in such school district shall expire on the next succeeding December 31 of an odd numbered year, provided however that if the school district becomes a first class school district later than April 1 of an odd numbered year, the term of office of each of its board members shall expire on December 31 of the next succeeding odd numbered year later than the year in which the district became a first class school district. For any district becoming a first class district 5 school board members shall be elected in the general election of the odd numbered year in which such terms of office expire and the 5 school board members so elected shall commence 2-year terms on January 1 of the even numbered year following such general election.

Vacancies.

In case a vacancy occurs for any reason on the first class district board such vacancy shall be filled by majority vote of all persons serving as regional board and first class district board members at a meeting called by the president of the first class district board for such purpose. No vacancies shall be filled later than 60 days prior to a primary election at which first class district board members are to be nominated. Vacancies which shall occur prior to the effective date of this act or have occurred in 1970, shall be filled for a term ending December 31, 1972, in the same manner as provided in this section for the election of board members at large in the year 1970 and such positions shall then be filled in the primary and general election of 1972 for a 3-year term. In 1970 the candidate receiving the highest number of votes shall be elected for the 3-year term and the candidates receiving the next highest number of votes shall be elected for 2-year terms to fill vacancies.

388.174 Regional board, qualifications, residency. [M.S.A. 15.2298(4)]

Sec. 4. A candidate for a regional board must be 21 years of age at the time of filing and must reside in the region in which he becomes a candidate. If his legal residence is moved from the region during his term of office, it shall constitute a vacating of office.

388.175 District board, powers. [M.S.A. 15.2298(5)]

Sec. 5. The first class school district board shall retain all the powers and duties now possessed by a first class school district except for those given to a regional board under the provisions of this act and such other functions as are delegated to the regional boards by the first class school district board.

388.176 Regional board, powers. [M.S.A. 15.2298(6)]

Sec. 6. Effective upon the commencement of its term of office, the regional board, subject to guidelines established by the first class district board, shall have the power to:

(1) Employ a superintendent for the schools in the region from a list or lists of candidates submitted by the first class district board and to discharge any such regional superintendent.

(2) Employ and discharge, assign and promote all teachers and other employees of the region and schools therein subject to review by the first class school district board, which may overrule, modify or affirm the action of the regional board.

(3) Determine the curriculum, use of educational facilities and establishment of educational and testing programs in the region and schools therein.

(4) Determine the budget for the region and schools therein based upon the allocation of funds received from the first class school district board.

388.177 **Employee rights. [M.S.A. 15.2298(7)]**

Sec. 7. The rights of retirement, tenure, seniority and of any other benefits of any employee transferred to a region or schools therein from the first class district or transferred between regions shall not be abrogated, diminished or impaired.

388.178 **District board, functions. [M.S.A. 15.2298(8)]**

Sec. 8. The first class school district board shall perform the following functions for the regions and schools therein:

(1) Central purchasing.

(2) Payroll.

(3) Contract negotiations for all employees, subject to the provisions of Act No. 336 of the Public Acts of 1947, as amended, being sections 423.201 to 423.216 of the Compiled Laws of 1948, and subject to any bargaining certification and to the provisions of any collective bargaining agreement pertaining to affected employees.

(4) Property management and maintenance.

(5) Bonding.

(6) Special education programs.

(7) Allocation of funds for capital outlay and operations for each region and schools therein.

(8) Establish or modify guidelines for the implementation of the provisions of section 6. Such guidelines shall include but not be limited to the determination and specification of each regional board's jurisdiction and may provide for regional board's jurisdiction over schools not geographically located within their respective regions.

388.179 **Facilities and accommodations, selection; employees. [M.S.A. 15.2298(9)]**

Sec. 9. Facilities and accommodations provided by the first class school district board for regional boards shall be selected with due consideration for accessibility, economy and utilization of existing facilities. Employees assigned by the first class school district board to regional boards at the time of commencement of their functions shall be drawn, to the extent feasible, from persons employed at such time by the first class school district.

388.180 **Board members, compensation. [M.S.A. 15.2298(10)]**

Sec. 10. Regional board members shall be paid a per diem allowance of $20.00 for each meeting of their board attended and first class district board members shall be paid a per diem allowance of $30.00 for each meeting of their board attended, but in neither case shall such payments be for meetings in excess of 52 meetings per annum. The chairman of each regional board shall be paid for up to 52 regional board meetings attended and up to 52 first class district board meetings attended.

388.181 **Initiative and referendum. [M.S.A. 15.2298(11)]**

Sec. 11. First class school districts with 100,000 student membership or more shall have the same rights for initiative petition and referendum now granted by law to second and third class districts.

388.182 Attendance provisions, implementation; conditions. [M.S.A. 15.2298(12)]

Sec. 12. The implementation of any attendance provisions for the 1970-71 school year determined by any first class school district board shall be delayed pending the date of commencement of functions by the first class school district boards established under the provisions of this amendatory act but such provision shall not impair the right of any such board to determine and implement prior to such date such changes in attendance provisions as are mandated by practical necessity. In reviewing, confirming, establishing or modifying attendance provisions the first class school district boards established under the provisions of this amendatory act shall have a policy of open enrollment and shall enable students to attend a school of preference but providing priority acceptance, insofar as practicable, in cases of insufficient school capacity, to those students residing nearest the school and to those students desiring to attend the school for participation in vocationally oriented courses or other specialized curriculum.

388.183 Severability. [M.S.A. 15.2298(13)]

Sec. 13. If any portion of this act or the application thereof to any person or circumstance shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of this act which can be given effect without the invalid portion or application, and to this end this act is declared to be severable.

Repeal.

Section 2. Sections 1, 2 and 3 of Act No. 244 of the Public Acts of 1969, being sections 388.171, 388.172 and 388.173 of the Compiled Laws of 1948, are repealed.

Act 289, 1964, p. 584; Eff. Aug. 28.

AN ACT to provide for the study and development of plans for the reorganization of school districts and for elections to accomplish same; to provide for the creation of state and intermediate reorganization committees; to prescribe their powers and duties; to provide for hearings and elections on reorganization plans; and to prescribe the powers and duties of the superintendent of public instruction.

The People of the State of Michigan enact:

388.681 Reorganization of school districts; definitions.

Sec. 1. As used in this act:

(a) "Reorganization of school districts" means the formation of new school districts, the alteration of boundaries of established school districts, and the dissolution or disorganization of established school districts through or by means of any one or combination of the methods as set forth in this act.

(b) "State committee" means the state committee for the reorganization of school districts created in this act.

(c) "Intermediate committee" means the committee for the reorganization of school districts created in this act.

(d) "Plan of reorganization" means a concrete proposal for readjustment and realignment of the boundaries of school districts within an intermediate school district area.

(e) "Non-high school district" means a school district presently operating less than a kindergarten through twelfth grade program.

(f) "School code" means Act No. 269 of the Public Acts of 1955, as amended, being sections 340.1 to 340.984 of the Compiled Laws of 1948.

HISTORY: New 1964, p. 584, Act 288, Eff. Aug. 28.
CITED IN OTHER SECTIONS: Sections 388.681 to 388.693 are cited in §§ 340.352a and 388.711.

388.682 State committee for reorganization of school districts; appointments, distribution; vacancies, compensation.

Sec. 2. There is created, for the term of time necessary to complete the requirements of this act, a state committee for the reorganization of school districts, appointed by the governor, and composed of 7 members, at least 1 of whom shall represent the Upper Peninsula, 1 the area above the Bay City-Muskegon line, and 5 shall be appointed in such manner as to represent fairly the remainder of the state. The superintendent of public instruction shall be the nonvoting chairman of the committee. Vacancies shall be filled by appointment of the governor. Members of the state committee shall serve without compensation. The members of the committee shall be appointed within 60 days after the effective date of this act.

HISTORY: New 1964, p. 585, Act 289, Eff. Aug. 28.

388.683 State reorganization committee; officers, records, meetings, quorum.

Sec. 3. Within 90 days after the effective date of this act, the state committee shall organize by electing a vice-chairman and a secretary. The vice-chairman shall act as chairman at the request of the superintendent of public instruction. The secretary shall keep the records of official committee meetings and prepare and distribute materials as requested by the state committee. Meetings of the committee shall be held upon the call of the chairman or any 3 of the members thereof. Five members, which may include the superintendent of public instruction, constitute a quorum.

HISTORY: New 1964, p. 585, Act 290, Eff. Aug. 28.

388.684 School district reorganization program; surveys, approval of proposals, reports.

Sec. 4. The state committee shall:

(a) Within 12 months after the effective date of this act, develop policies, principles and procedures for a statewide school district reorganization program planned so that all areas may become part of a school district operating or designed to operate at least 12 grades. In no case can an intermediate district committee plan be submitted under this act which would require the merger of 2 or more school districts of the third class or higher. There shall be created no less than 500 school districts operating 12 grades.

(b) Direct area surveys and develop a manual of procedure to be printed and distributed to all intermediate district superintendents of schools.

(c) Perform either by itself or by its authorized representative any or all of the duties required by this act to be performed by the intermediate school district superintendent, the intermediate district board of education, the intermediate district committee, or the probate judge or judges, in case of failure by any or all of them to perform these duties.

(d) Review and approve or reject intermediate district plans within 60 days after receipt of plans from the intermediate district committees.

(e) Report to each intermediate district the acceptance or rejection of the proposed plans with recommendations for changes.

(f) Present a progress report on reorganization under this act to the state legislature on or before March 1 of each year.

HISTORY: New 1964, p. 383, Act 289, Eff. Aug. 28.

388.685 Intermediate district committee for reorganization of school districts; membership, election, vacancies, organization.

Sec. 5. (1) A committee shall be organized in each intermediate district in the state to be known as the intermediate district committee for the reorganization of school districts. The intermediate district superintendent of schools shall be nonvoting chairman of the intermediate district committee, and he shall preside over all meetings of the intermediate district committee. The intermediate district committee shall complete the requirements of this act and comply with the requests made by the state committee.

There shall be 18 members on the intermediate district committee each of whom shall be a registered resident elector. In intermediate districts containing no district operating 12 grades or more and in intermediate districts containing no non-high school districts the committee shall consist of 13 members.

(2) Members of the intermediate district committee shall be chosen as follows:

(a) The intermediate board of education shall appoint 3 of its members to serve on the committee.

(b) The intermediate district superintendent of schools, by notice sent by mail, shall call a meeting of the boards of education of all school districts operating a program of 12 grades or more in the intermediate district. The meeting shall be held at some convenient place within the intermediate district within 60 days after the effective date of this act. The intermediate district superintendent shall act as chairman of this meeting, and the board members shall elect by ballot 5 persons to serve on the intermediate district committee not more than 2 of whom shall be from any one constituent district, unless there are fewer districts than there are positions to fill. The 5 persons receiving the highest number of votes shall be declared elected. No person may be elected to or serve on the committee who is an employee of any constituent school district or of the intermediate school district. The chairman shall appoint 3 or more tellers to conduct the election and to canvass the vote. Whenever not more than 2 of the 5 members fail to serve on the committee, the remaining members shall fill the vacancy from the same constituent district in which the vacancy occurs. Whenever 3 or more vacancies occur at the same time, the vacancies shall be filled in the same manner as the original committee members were elected.

(c) The intermediate district superintendent of schools, by notice sent by mail, shall call a meeting of the boards of education of all school districts operating less than a twelve-grade program in the intermediate district. The meeting shall be held at some convenient place within the intermediate district within 60 days after the effective date of this act. The intermediate district superintendent shall act as chairman of this meeting, and the board members shall elect by ballot 5 persons to serve on the intermediate district committee not more than 2 of whom shall be from any one constituent district, unless there are fewer districts than there are positions to be filled. The 5 persons receiving the highest number of votes shall be declared elected. No person may be elected to or serve on the committee who is an employee of any constituent school district or of the intermediate school district. The chairman shall appoint 3 or more tellers to conduct the election and to canvass the vote. Whenever not more than 2 of the 5 members fail to serve on the committee, the remaining members shall fill the vacancy from the same constituent district in which the vacancy occurs. Whenever 3 or more vacancies occur at the same time, the vacancies shall be filled in the same manner as the original committee members were elected.

(d) The intermediate district superintendent of schools, by notice sent by letter, shall notify the probate judge of the area, who, within 60 days after the effective date of this act, shall appoint 5 members to the committee fairly representing all areas of the intermediate district. The qualifications of these members shall be the same as those of the other members of the committee. The probate judge shall fill all vacancies that may occur among his appointees. In any intermediate district where there are 2 or more probate judges the judges acting jointly shall make the appointments.

(3) Organization of the intermediate district committee shall be completed in each district within 6 months after the effective date of this act. If an intermediate district committee has not been organized within 6 months, the state committee shall appoint the members within 60 days thereafter. In which event the same limitations shall apply as provided in this section.

HISTORY: New 1964, p. 385, Act 269, Eff. Aug. 28.

388.686 Intermediate district reorganization committee; meetings, records, district reorganization plan, hearings, approval, revision, dissolution of committee.

Sec. 6. Each intermediate district committee shall elect a secretary who shall keep the minutes and records of all official meetings. Meetings shall be held upon the call of the chairman or any 3 members of the committee. A majority of the committee shall constitute a quorum. The intermediate district committee shall follow the procedure guide provided by the state committee and prepare a district reorganization plan, which shall be submitted to the state committee for its approval or disapproval. The plan shall provide for the reorganization of school districts within the intermediate district so that all areas of the district may become a part of a school district operating or designed to operate at least 12 grades. The intermediate district committee shall hold at least 1 public hearing regarding the plan but may hold as many more as it deems necessary. Hearings shall be advertised by publication at least once in a newspaper of general circulation in the districts 10 days or more before the scheduled hearing. The intermediate district plan for reorganization shall be submitted to the state committee

for its consideration within 9 months after receiving the manual of procedure from the state committee. If the intermediate district plan is approved by the state committee, the plan shall be submitted to the electors as provided in section 7 of this act. If an intermediate district plan is rejected by the state committee, a revised plan shall be submitted by the intermediate district committee within 90 days after receipt of the rejection of the original plan. If the revised plan is not accepted by the state committee, the state committee shall submit a plan for the reorganization of the school districts in the intermediate school district and the intermediate committee shall also submit a plan for the reorganization of the school districts in the intermediate school district. The intermediate school district board shall submit both plans to the electors of the intermediate school district and the plan receiving the larger number of votes shall be submitted to the qualified electors of the intermediate school district in accordance with the requirements of method 2 provided in section 7 of this act. Following this election, the intermediate committee shall be dissolved and the requirements of this act shall have been met and no further plans shall be re-submitted for 5 years by either the state committee or the intermediate district. The intermediate district committee shall also be dissolved on completion and acceptance of the plan by the state committee and the vote or votes on the plan by the electors of the proposed school district.

HISTORY: New 1994, p. 580, Act 288, Eff. Aug. 28.

388.687 Optional election methods for adoption of reorganization plans; conduct.

Sec. 7. Not less than 90 days nor more than 6 months following approval of an intermediate district plan as provided in section 6 of this act elections shall be held according to one of 2 methods. The intermediate district committee shall determine which election method shall be used.

Method 1. The entire area encompassed by the intermediate district plan shall vote as a unit on the question: "Shall the approved reorganization plan for the ..... intermediate district be adopted?

Yes ( )

No ( )"

If a majority of the qualified electors present and voting approve the plan it shall be declared adopted and shall become effective throughout the area on the date of the election if the election is held after April 30 but before September 1. The effective date shall be July 1 following if the election is held after August 31 but before May 1.

Method 2. The proposed districts provided for in the approved plan shall vote by proposed districts on the question: "Shall the approved reorganization plan for a proposed local district ..... within the intermediate district of ..... be adopted?

Yes ( )

No ( )"

If a majority of the qualified electors present and voting in a proposed district approve the plan for that proposed district it shall be declared adopted and shall become effective throughout the proposed district on the date of the election if the election is held after April 30 but before September 1. The effective date shall be July 1 following if the election is held after August 31 but before May 1.

If election method number 1 is adopted by the intermediate district committee and if the question voted on fails to obtain an affirmative majority, then another election using method number 2 shall be held not less than 90 days nor more than 6 months after the date of the first election. The results of this election using method number 2 shall be final and the requirements of this act shall have been met.

If the intermediate district plan provides that the boundaries of an existing school district shall remain the same such district shall not participate in an election held under either method number 1 or method number 2.

If the election is held under method number 1, the plan to be voted on shall not cause an existing school district to be divided between 2 intermediate districts but property transfers may be made later according to the provisions of chapter 5, part 2 of the school code. The plan may provide for division of districts within an intermediate district.

If and when voting method number 2 is used, the plan shall not cause an existing school district to be divided between 2 proposed local districts within the intermediate unit but property transfers may be made later according to chapter 5, part 2 of the school code.

No property transfers shall be made after the approval of the intermediate district plan by the state committee until after the elections provided for in this section have been held.

The question of assumption of bonded indebtedness shall not be included in any election held under the provisions of this act but the provisions of sections 412 and 413 of the school code regarding assumption of debt shall apply.

The qualifications of electors shall be the same as now provided in the statutes for votes on consolidation and annexation and the provisions of the general election laws shall apply.

The board of education of the intermediate school district shall conduct the election or elections provided for in this section according to the general election laws and according to chapters 7 and 8 of part 2 of the school code.

HISTORY: New 1964, p. 587, Act 289, Eff. Aug. 28.

388.688 Classification of districts formed.

Sec. 8. Districts formed under the provisions of this act shall be classified as second, third or fourth class districts depending upon the school census as provided for in chapters 3, 4 and 5, part 1 of the school code.

HISTORY: New 1964, p. 588, Act 289, Eff. Aug. 28.

388.689 Consolidation, annexation or division of districts.

Sec. 9. After the effective date of this act, the superintendent of public instruction, when requested to approve a consolidation, annexation or division of a district, shall give careful consideration to the progress of the implementation of the requirements of this act.

HISTORY: New 1964, p. 588, Act 289, Eff. Aug. 28.

388.690 School aid; apportionment.

Sec. 10. School districts formed under the provisions of this act shall be entitled to and receive financial aid from the state in the manner provided by legislative appropriation for school aid purposes except that the apportionments of state aid due any school district formed under this act in the 2 fiscal years next following reorganization shall not be less than the aggregate of state aid which would have been due proportionately to the component districts prior to the reorganization. It shall be the duty of the superintendent of public instruction in making apportionments of state aid to adjust the amount of state aid due each such school district accordingly.

HISTORY: New 1964, p. 585, Act 259, Eff. Aug. 28.

388.691 Board of education of newly-formed district.

Sec. 11. Where the proposed district involves expansion of the boundaries of an existing twelve-grade district by addition of non-twelve-grade territory the board of education of the twelve-grade district shall continue as the board of the enlarged district.

Where the proposed district involves the merger of 2 or more twelve-grade districts with or without the addition of non-twelve-grade territory, or where the proposed district involves merger of non-twelve-grade districts into a new twelve-grade district a board of education fairly representing all areas of the new district shall be appointed by the intermediate district board to serve until a new board is elected as provided in section 410 of the school code.

HISTORY: New 1964, p. 588, Act 259, Eff. Aug. 28.

388.692 Board of education of district losing identity; records, property.

Sec. 12. The boards of education of any district which lose identity shall turn over their books, records, funds and property to the new board within 10 days after the effective date of the reorganization. If any existing district is divided, the intermediate district board, or boards, shall specify the division of assets and liabilities.

HISTORY: New 1964, p. 589, Act 259, Eff. Aug. 28.

388.693 Final report; termination of act.

Sec. 13. The state commission shall make a final report to the state legislature on or before September 1, 1968, and this act shall expire on the date of filing the final report.

HISTORY: New 1964, p. 589, Act 259, Eff. Aug. 28.

Act 239, 1967, p. 352; Imd. Eff. Jul. 12.

AN ACT to provide recognition of a state of emergency in certain school districts in the state; to provide for continuance of the state committee on reorganization of school districts; and to provide certain powers and duties of the state board of education in connection therewith.

The People of the State of Michigan enact:

388.711 Reorganization of school districts; determination of emergency.

Sec. 1. The state committee for the reorganization of school districts, created by Act No. 289 of the Public Acts of 1964, being sections 388.681 to 388.693 of the Compiled Laws of 1948 shall determine the existence of an emergency warranting immediate reorganization within any primary school district or school district of the fourth class not reorganized under the provisions of Act No. 289 of the Public Acts of 1964.

HISTORY: New 1967, p. 352, Act 239, Imd. Eff. Jul. 12.

CITED IN OTHER SECTIONS: Sections 388.711 to 388.720a are cited in § 388.620a.

388.712 Emergency school district; reorganization; applicability; determination of emergency.

Sec. 2. This act applies only to school districts lying wholly in, or the major part of the territory of which lies wholly in, a county having a population of more than 1,000,000. The board of education or 5% of the school electors, but not less than 5 electors in a primary school district or less than 25 electors in a school district of the fourth class, of any primary school district or school district of the fourth class not reorganized under the provisions of Act No. 289 of the Public Acts of 1964, may petition the state board of education to determine if an emergency warranting immediate reorganization exists within the district.

HISTORY: New 1967, p. 352, Act 239, Imd. Eff. Jul. 12;—Am. 1968, p. 192, Act 130, Imd. Eff. Jun. 11.

388.713 Determination of emergency; hearing.

Sec. 3. Upon receipt of the petition, the state committee shall conduct, or cause to be conducted, an impartial study to determine if an emergency exists. Within 20 days following publication of the results of the study, a member of the state committee, or the secretary designated by the committee, shall hold a hearing in the district. Notice of the time and place of the hearing shall be given the voters of the district and the superintendent of the intermediate school district to which the district is constituent.

HISTORY: New 1967, p. 352, Act 239, Imd. Eff. Jul. 12.

388.714 Reorganization committee; findings, contents.

Sec. 4. Within 20 days following receipt of a transcript of the hearing, the state committee shall make a finding relative to the existence of a condition or conditions warranting immediate reorganization of the district. The finding shall include consideration of the adequacy of the district to provide the following:

(a) An educational program meeting standards established by the state department of education or by accrediting agencies.

(b) A physical plant which can contain an acceptable school program.

(c) Transportation for students.

(d) Necessary tax base.

(e) Pupil services, administrative and teaching staff, and auxiliary services in compliance with rules prescribed by the department of education.

HISTORY: New 1967, p. 353, Act 239, Imd. Eff. Jul. 12.

388.715 Need for immediate reorganization; report and recommendations.

Sec. 5. Upon a finding by the state committee that conditions in a school district warrant immediate reorganization, the state committee shall transmit its report with recommendations to the state board of education.

HISTORY: New 1967, p. 353, Act 239, Imd. Eff. Jul. 12.

388.716 State committee report and recommendations; publication; filing of objections and recommendations; determination of state board.

Sec. 6. The state board of education shall publish the report and recommendations of the state committee and shall invite objections or comments to be filed with it within 20 days following publication of the report. The state board then shall consider the report of the state committee, together with the comments and objections filed, and make a determination as to endorsement of the finding of the state committee.

HISTORY: New 1967, p. 353, Act 239, Imd. Eff. Jul. 12.

388.717 Attachment of territory by annexation; effective date; finality; conclusiveness.

Sec. 7. The state board of education, upon the finding that an emergency warrants immediate reorganization of a school district, shall attach the district by annexation or division to such other district or districts as will provide the most equitable educational opportunity for all of the students of the reorganized district and shall determine the effective date of attachment. Action of the state board of education shall be final. For the 4 fiscal years immediately subsequent to the annexation, the receiving district may elect to compute and receive state aid for that portion of the district annexed based upon the per pupil state equalized valuation of the annexed portion.

HISTORY: New 1967, p. 353, Act 239, Imd. Eff. Jul. 12.—Am. 1968, p. 193, Act 130, Imd. Eff. Jun. 11.

388.718 Reorganized school district; bonded indebtedness, levy of taxes.

Sec. 8. If a district attached under the provisions of this act at the time of reorganization, has a bonded indebtedness incurred after December 8, 1932, its identity shall not be lost and its territory shall remain as an assessing unit for purposes of such bonded indebtedness until the indebtedness has been retired or the outstanding bonds refunded by the reorganized district. The board of the reorganized district, or the board of the district which has succeeded to the largest share of the state equalized valuation of the attached district, shall constitute the board of trustees for the original district having bonded indebtedness and the officers of the reorganized or successor district shall be the officers for the original district. The board of the reorganized or successor district shall certify and order the levy of taxes for the bonded indebtedness in the name of the original district, shall not commingle the debt retirement funds of the original district with funds of the reorganized or successor district and shall do all things relative to such bonded indebtedness required by law and by the terms under which the issue and sale of the bonds were originally authorized. All other tax levies for purposes of the reorganized district shall be spread over the entire area of the reorganized district.

HISTORY: New 1967, p. 353, Act 239, Imd. Eff. Jul. 12.

388.719 Reorganized school district; assumption of bonded indebtedness of original school district; effect; certification, levy of taxes; election.

Sec. 9. Any time after 3 years following reorganization, the reorganized district, or that district which has succeeded to the largest share of the attached district's state equalized valuation, may assume the obligation of the bonded indebtedness incurred after December 8, 1932, of the original district which has become a part of the reorganization and pay the same from the proceeds of a debt retirement tax levy spread uniformly over the territory of the reorganized or successor district whenever the electors of the reorganized or successor district shall have approved an increase in the limitation on taxes for that purpose and the school tax electors of the district have approved the assumption of such bonded indebtedness. Assumption of the bonded indebtedness of an original school district shall not release the territory of the original district from the final responsibility of paying the obligation or rescind the increase in the limitation on taxes pledged to the bond issue or available to it in the original district, nor be construed as so doing. When the bonded indebtedness of an original district has been so assumed, the board of the reorganized or successor district shall certify and order the levy of taxes for the bonded indebtedness equivalent in terms of money to those required by the terms under which the indebtedness was originally incurred and carry out all provisions of the original bond contract. The election to assume the bonded indebtedness of an attached district may be held at any time after 3 years following the effective date of reorganization when a proposal is placed before the school tax electors to increase the bonded indebtedness of the combined district.

HISTORY: New 1967, p. 354, Act 239, Imd. Eff. Jul. 12.

388.720 Petitions for emergency reorganization; intermediate district superintendent to furnish; form; who may sign; circulation signatures.

Sec. 10. The intermediate district superintendent upon request shall furnish any school district with petitions. The petitions shall be printed or duplicated and the first page shall be in the following form:

Petition no. ..... consisting of ..... pages.

(Signed) .....

Superintendent of intermediate district of .....

To the state committee on reorganization of school districts, Lansing, Michigan.

We, the undersigned, qualified (here insert "registered" in the case of a registration district) electors of .....

(name of school district)

declare that in the following school district there does exist an emergency calling for immediate reorganization, and we do call upon the state board of education to reorganize the district:

Name of school district to be reorganized to be listed here .....

Signatures of petitioners

Name	Address	Date of signing

Each additional page of any such petition shall have at or near the top of the page the following:

Official petition

No. ..... Page no. .....

Signature of intermediate district superintendent .....

Each page shall have printed or duplicated the following statement below th space for signature for petitioners:

The undersigned certifies that he is a qualified (here insert "registered" in the ca of a registration district) elector of .....

(name of school district)

and that each signature appearing on this page is the genuine signature of the perso signing the same and that to his best knowledge and belief each such person was a the time of signing a qualified (here insert "registered" in the case of a registratio district) elector of the school district.

Dated this ..... day of ..... 19.....

Each petition shall be signed by the intermediate district superintendent as ind cated in the foregoing form before being issued to any person for circulation.

Only qualified school electors of the districts in which signatures to the petitions ar being sought shall circulate such petitions and the statement appearing below the sig natures of petitioners shall be dated or signed on each page before returning to the state committee.

HISTORY: New 1967, p. 354, Act 239, Imd. Eff. Jul. 12.

388.720a State committee on reorganization of school districts; continuation.

Sec. 10a. The state committee on reorganization of school districts shall continue in existence for purposes of this act, notwithstanding any expiration date otherwise provided by law.

HISTORY: Add. 1968, p. 193, Act 130, Imd. Eff. Jun. 11.

388.721 Repealed. 1968, p. 193, Act 130, Imd. Eff. Jun. 11.

Section related to termination of school aid act July 1, 1966.

388.731 Repealed. 1955, p. 597, Act 269, Eff. Jul. 1.

Section provided for payment of certain school bonds where a portion of district has been annexed to city school district with population 250,000 or over.

PUBLIC ACTS 1937—No. 306.

Public or private school buildings; construction regulations and requirements.

Section 1. No school building, public or private, or additions thereto, shall hereafter be erected in the state of Michigan except it be in conformity with the following provisions of this act:

1. This act shall apply to school buildings having more than one story. If it shall be designed for class rooms in the basement, then the basement shall be considered as one floor. School gymnasiums, school cafeterias, school auditoriums and school places of assembly shall be specifically included under the provisions of this act.

2. All plans and specifications, for buildings under the scope of this act, shall be prepared by, and the construction supervised by, an architect or engineer who is registered in the state of Michigan.

3. All walls, floors, partitions and roofs shall be constructed of fire-resisting materials such as stone, brick, tile, concrete, gypsum, steel or similar fire-resisting materials. All steel members shall be protected by at least three-fourths of an inch of fire-resisting material.

4. No wood lath or wood furring shall be used. However, these regulations shall not be construed as prohibiting the use of wood flooring on masonry sub-floors, or the use of wood sleepers, wood cabinets, or wood trim.

5. Every room enclosing a heating unit shall be enclosed by walls of fire-resisting materials and shall be equipped with automatically-closing fire-doors; and said heating unit shall not be located directly beneath a class-room: *Provided further,* That in any school where natural gas or any other kind of gas shall be used for heating purposes said gas shall be chemically treated before being used in such a manner as to give a very distinguishable odor if any leak should develop in the heating system.

6. In gymnasiums, fire-proofings may be omitted from the trusses and purlins if they are more than sixteen feet off the main floor level; also, from the steel supports of the running track. The running track shall be constructed of wood not less than two inches thick. It shall be the duty of the architect or engineer to provide adequate exits. In all cases there shall be at least two stairways and the distance from the door of any class or assembly room to a stairway or exit shall not exceed one hundred feet.

S 1, as amended by 1949 PA 231

388.851 Public or private school buildings; construction requirements. [M.S.A. 15.1961]

Sec. 1. No school building, public or private, or additions thereto, shall hereafter be erected, remodeled or reconstructed in the state of Michigan except it be in conformity with the following provisions:

(a) All plans and specifications for buildings shall be prepared by, and the construction supervised by, an architect or engineer who is registered in the state of Michigan. Before the construction, reconstruction or remodeling of any school building or addition thereto is commenced, the written approval of the plans and specifications by the superintendent of public instruction or his authorized agent shall be obtained. In the approval of plans and specifications the superintendent of public instruction or his authorized agent shall consider in addition to the considerations otherwise mentioned in this act the following factors:

(1) The adequacy and location of the site.

(2) The educational usefulness of the building.

(3) The provisions for health and safety.

The superintendent of public instruction shall publish an informative bulletin which shall set forth good school building planning procedures and interpret clearly the provisions of this act.

(b) All walls, floors, partitions and roofs shall be constructed of fire-resisting materials such as stone, brick, tile, concrete, gypsum, steel or similar fire-resisting materials. All steel members shall be protected by at least ¾ of an inch of fire-resisting material.

(c) No wood lath or wood furring shall be used: Provided, however, That these regulations shall not be construed as prohibiting the use of finished wood flooring, wood door and window frames, wood sash or wood furring and grounds, for the purpose of installing wood trim, panelling, acoustical units or similar facing materials on masonry walls, structural steel or concrete ceiling members.

(d) Every room enclosing a heating unit shall be enclosed by walls or fire-resisting materials and shall be equipped with automatically closing fire doors; and said heating unit shall not be located directly beneath any portion of a school building or addition thereto which is constructed or reconstructed after the effective date of this act: Provided, That this regulation shall not be construed to require the removal of an existing heating plant from beneath an existing building when an addition to such building is constructed unless the state superintendent of public instruction or his authorized agent, acting jointly with the state fire marshal, shall so require in the interests of public safety: Provided further, That in any school where natural gas or any other kind of gas shall be used for heating purposes said gas shall be chemically treated before being used in such a manner as to give a very distinguishable odor if any leak should develop in the heating system.

(e) In gymnasiums, fire-proofings may be omitted from the trusses and purlins if they are more than 16 feet off the main floor level. It shall be the duty of the architect or engineer to provide adequate exits from all parts of school buildings. In all cases there shall be at least 2 stairways and the distance from the door of any class or assembly room to a stairway or exit shall not exceed 100 feet.

§1, as amended by 1962 PA 175

388.851 'Public or private school buildings; construction requirements, waiver. [M.S.A. 15.1961]

Sec. 1. No school building, public or private, or additions thereto, shall hereafter be erected, remodeled or reconstructed in the state of Michigan except it be in conformity with the following provisions:

(a) All plans and specifications for buildings shall be prepared by, and the construction supervised by, an architect or engineer who is registered in the state of Michigan. Before the construction, reconstruction or remodeling of any school building or addition thereto is commenced, the written approval of the plans and specifications by the superintendent of public instruction or his authorized agent shall be obtained. The superintendent of public instruction or his authorized agent shall not issue such approval until he has secured in writing the approval of the state fire marshal relative to factors concerning fire safety and of the health department having jurisdiciton relative to factors affecting water supply, sanitation and food handling.

The superintendent of public instruction shall publish an informative bulletin which shall set forth good school building planning procedures and interpret clearly the provisions of this act. The bulletin shall be prepared in cooperation with the state fire marshal and the state health commissioner and, insofar as requirements for approval of plans are concerned, shall be consistent with recognized good practice as evidenced by standards adopted by nationally recognized authorities in the fields of fire protection and health.

(b) All walls, floors, partitions and roofs shall be constructed of fire-resisting materials such as stone, brick, tile, concrete, gypsum, steel or similar fire-resisting material. steel members shall be protected by at least ¾ of an inch of fire-resisting material.

(c) No wood lath or wood furring shall be used: Provided, however, That these ulations shall not be construed as prohibiting the use of finished wood flooring, wood r and window frames, wood sash or wood furring and grounds, for the purpose of alling wood trim, panelling, acoustical units or similar facing materials on masonry ls, structural steel or concrete ceiling members.

(d) Every room enclosing a heating unit shall be enclosed by walls or fire-resisting terials and shall be equipped with automatically closing fire doors; and said heating t shall not be located directly beneath any portion of a school building or addition reto which is constructed or reconstructed after the effective date of this act: Provided, at this regulation shall not be construed to require the removal of an existing heating nt from beneath an existing building when an addition to such building is constructed less the state superintendent of public instruction or his authorized agent, acting jointly th the state fire marshal, shall so require in the interests of public safety: Provided rther, That in any school where natural gas or any other kind of gas shall be used for ating purposes said gas shall be chemically treated before being used in such a manner to give a very distinguishable odor if any leak should develop in the heating system.

(e) In gymnasiums, fire-proofings may be omitted from the trusses and purlins if they e more than 16 feet off the main floor level. It shall be the duty of the architect or gineer to provide adequate exits from all parts of school buildings. In all cases there all be at least 2 stairways and the distance from the door of any class or assembly room a stairway or exit shall not exceed 100 feet.

(f) Provisions in subsections (b) through (e) may be waived in writing by the state e marshal.

§ 1, as last amended by 1968 PA 239

38.851 School buildings; construction requirements; waiver.

Sec. 1. No school building, public or private, or additions thereto, shall be erected, emodeled or reconstructed in the state except it be in conformity with the following rovisions:

(a) All plans and specifications for buildings shall be prepared by, and the construction supervised by, an architect or engineer who is registered in the state of Michigan. efore the construction, reconstruction or remodeling of any school building or addition thereto is commenced, the written approval of the plans and specifications by the perintendent of public instruction or his authorized agent shall be obtained. The superintendent of public instruction or his authorized agent shall not issue such approval ntil he has secured in writing the approval of the state fire marshal, or the appropriate municipal official when certification as described in section 3 has been made, relative to factors concerning fire safety and of the health department having jurisdiction elative to factors affecting water supply, sanitation and food handling.

The superintendent of public instruction shall publish an informative bulletin which hall set forth good school building planning procedures and interpret clearly the provisions of this act. The bulletin shall be prepared in cooperation with the state fire narshal and the state health commissioner and, insofar as requirements for approval of plans are concerned, shall be consistent with recognized good practice as evidenced by standards adopted by nationally recognized authorities in the fields of fire protection and health.

(b) All walls, floors, partitions and roofs shall be constructed of fire-resisting materials such as stone, brick, tile, concrete, gypsum, steel or similar fire-resisting material.

All steel members shall be protected by at least 3/4 of an inch of fire-resisting material.

(c) No wood lath or wood furring shall be used. These regulations shall not be construed as prohibiting the use of finished wood flooring, wood door and window frames, wood sash or wood furring and grounds, for the purpose of installing wood trim, panelling, acoustical units or similar facing materials on masonry walls, structural steel or concrete ceiling members.

(d) Every room enclosing a heating unit shall be enclosed by walls of fire-resisting materials and shall be equipped with automatically closing fire doors; and said heating unit shall not be located directly beneath any portion of a school building or addition thereto which is constructed or reconstructed after the effective date of this act. This regulation shall not be construed to require the removal of an existing heating plant from beneath an existing building when an addition to such building is constructed unless the state superintendent of public instruction or his authorized agent, acting jointly with the state fire marshal, shall so require in the interests of the public safety. In any school where natural gas or any other kind of gas is used for heating purposes, the gas shall be chemically treated before being used in such a manner as to give a very distinguishable odor if any leak should develop in the heating system.

(e) In gymnasiums, fire-proofings may be omitted from the trusses and purlins if they are more than 16 feet off the main floor level. The architect or engineer shall provide adequate exits from all parts of school buildings. In all cases there shall be at least 2 stairways and the distance from the door of any class or assembly room to a stairway or exit shall not exceed 100 feet.

(f) Provisions in subdivisions (b) to (e) may be waived in writing by the state fire marshal.

HISTORY: Am. 1941, p. 192, Act 148, Eff. Jan. 10, 1942.—CL 1948, 388.551.—Am. 1949, p. 280, Act 231, Imd. Eff. May 31.—Am. 1957, p. 375, Act 175, Imd. Eff. May 17.—Am. 1968, p. 366, Act 239, Eff. Sep. 1.

CITED IN OTHER SECTIONS: The above section is cited in § 29.3c.

PUBLIC ACTS 1957—No. 312.

388.644 Uses of state aid; violations, audits, reports, public inspection. [M.S.A. 15.1919(84)]

Sec. 34. Except as provided in sections 3 to 6, inclusive, each school district shall apply the moneys received by it under the terms of this act on salaries of teachers, and other employees, on tuition, on transportation, lighting, heating and ventilation and water service and on the purchase of textbooks and other supplies: Provided, That an amount equal to not more than 5% of the total amount received by any school district under sections 8 et seq. of this act may be expended by the board of education of said district for capital costs or debt service for debts contracted after December 8, 1932; and no part of said money shall be applied or taken for any purpose whatsoever except as above provided. The superintendent of public instruction shall determine the reasonableness of such expenditures and may withhold from any school district which violates the provisions of this section, the apportionment otherwise due such school district under this act for the fiscal

year following the discovery by said superintendent of public instruction of such violation or violations by said school district. For the purpose of determining the reasonableness of such expenditures and whether any violation of the provisions of this act has occurred, the superintendent of public instruction shall require that school districts have audits of their financial and child accounting records at least once every 3 years at the expense of said districts by certified public accountants or by county school superintendents, as may be required by the superintendent of public instruction, or in the case of school districts of the first class by a certified public accountant, the county school superintendent or the auditor general of the city. Such audits shall be for such period or periods as the superintendent of public instruction shall specify, and shall be subject to such regulations as the superintendent, in consultation with the auditor general of the state may prescribe. Copies of the reports of such audits shall be filed as required by the superintendent of public instruction and shall be available at all reasonable times for public inspection.

1957 PA 312 was repealed by 1972 PA 258, § 179. § 18 of 1972 PA 258 is the present equivalent of 1957 PA 312, § 34.

388.1118 Uses of state aid; violations; audits; inspection. [M.S.A. 15.1919(518)]

Sec. 18. (1) Except as provided in chapters 3, 4 and 6, each district shall apply the moneys received by it under this act on salaries of teachers and other employees, tuition, transportation, lighting, heating and ventilation and water service and on the purchase of textbooks and other supplies. An amount equal to not more than 5% of the total amount received by any district under chapter 2 may be expended by the board for capital costs or debt service for debts contracted after December 8, 1932. No part of the money shall be applied or taken for any purpose whatsoever except as provided in this section. The department shall determine the reasonableness of expenditures and may withhold from any district the apportionment otherwise due for the fiscal year following the discovery by the department of a violation by the district.

(2) For the purpose of determining the reasonableness of expenditures and whether any violation of this act has occurred, the department shall require that districts have audits of their financial and child accounting records at least annually at the expense of the districts by certified public accountants or by intermediate district superintendents, as may be required by the department, or in the case of districts of the first class by a certified public accountant, the intermediate superintendent or the auditor general of the city. The audits shall be subject to such rules as the state board, in consultation with the state auditor general, may prescribe. Copies of the reports of the audits shall be filed as required by the state board and shall be available at all reasonable times for public inspection.

388.1121 Basic allotments; reorganization. [M.S.A. 15.1919(521)]

Sec. 21. (1) Except as otherwise provided in this act, from the amount appropriated in section 11 there is allocated to every district a sum determined as provided in subsection (2) plus the amounts allocated for transportation in chapter 7 and tuition in chapter 11.

(2) The sum allocated to each school district shall be computed from the following table:

State equalized valuation behind each child	Gross Allowance	Deductible Millage
(a) $17,750.00 or more	$644.00	16
(b) Less than $17,750.00	$715.00	20

(3) Whenever 2 or more districts are reorganized into a single district either through a procedure of annexation or consolidation, the amount of state aid to be received by the new district during the 2 years immediately subsequent to the annexation or consolidation shall not be less than the total sum of state aid which was earned by all the districts forming the new district during the last fiscal year in which the districts received aid as separate districts except that no more than $400,000.00 shall be allocated under this subsection.

§ 21(1), as amended by 1973 PA 101

§ 15.1919(521) Sums allocated to districts; levy of taxes.] SEC. 21. (1) Except as otherwise provided in this act, from the amount appropriated in section 11 there is allocated to every district a sum determined as provided in [this] subsection ♦.

♦ The sum allocated to each school district shall be [an amount per membership pupil to be] computed ♦ [by subtracting, from $38,000.00 in 1973–74, $39,000.00 in 1974–75 and $40,000.00 in 1975–76, the district's state equalized valuation behind each membership pupil and then multiplying the resulting difference by the tax levied for purposes included in the operation cost of the district as defined in section 112, up to and including 22 mills in 1973–74, 25 mills in 1974–75 and without limitation thereafter.

A tax levied pursuant to subdivision (b) of subsection (4) of section 681 of the school code of 1955, as amended, being section 340.681 of the Michigan Compiled Laws, for the retirement of an operating deficit shall be considered levied for operating purposes in making computations under this section.

388.1151 Reimbursement program; allocation; rate of reimbursement.
[M.S.A. 15.1919(551)]

Sec. 51. (1) There is authorized a $67,000,000.00 program for the purpose of reimbursing districts for special education programs, services and special education personnel as defined in the school code of 1955.

(2) From the amount appropriated in section 11, there is allocated the sum of $50,000,000.00 which amount shall be augmented with $17,000,000.00 of federal funds available under an agreement with the department of social services.

(3) Reimbursement shall be at 75% of the actual cost of salaries, not to exceed $8,100.00 for any individual salary, for such programs and services as determined by the department. Not later than March 1, 1973 the department shall prepare a written report for the legislature indicating the amount of federal moneys earned under the agreement with the department of social services from July 1, 1972 through June 30, 1973.

§ 51, as amended by 1973 PA 101

§ 15.1919(551) Special education programs, services and personnel; authorization of funds.] SEC. 51. (1) There is authorized a ♦ program [of not to exceed $100,000,000.00] for the purpose of reimbursing districts for special education programs, services and special education personnel as defined in the school code of 1955[, including alternative education programs for pregnant persons approved by the department in accordance with Act No. 242 of the Public Acts of 1970, being sections 388.391 to 388.394 of the Michigan Compiled Laws, and programs for pupils handicapped by learning disabilities as defined by the department. An amount equal to the difference between the $17,000,000.00 of federal funds anticipated for the 1972–73 school year and the amount of federal funds actually received, but not to exceed $10,400,000.00, shall be distributed to the districts as reimbursement for programs conducted, services rendered and personnel employed in 1972–73].

Allocations; reports; deficiencies in anticipated federal funding.] (2) From the amount appropriated in section 11, there is allocated the sum of [$84,000,000.00] which amount shall be augmented with [not to exceed $16,000,000.00] of federal funds available under an agreement with the department of social services. [Prior to December 1, 1973 and April 1, 1974 the department shall evaluate the availability of such federal funds,

shall report to the districts and the intermediate districts thereupon and shall adjust the amount of subsequent statements prepared pursuant to section 17 of this act accordingly. Nothing in this section shall be construed as an expressed or implied statement of intent, on the part of the State of Michigan, to assume responsibility for any deficiency in anticipated federal funding.]

Reimbursement; report to legislature.] (3) Reimbursement shall be at 75% of the actual cost of salaries, not to exceed $8,100.00 for any individual salary, for such programs and services as determined by the department[, unless the appropriation made in this section exceeds the amount necessary to fund this scale of reimbursement, in which case the scale shall be prorated upward accordingly]. Not later than March 1, [1974] the department shall prepare a written report for the legislature indicating the amount of federal moneys earned under the agreement with the department of social services from July 1, [1973] through June 30, [1974, and shall develop and report to the legislature a system for reimbursing special education programs and services on an added cost basis.

Transferred personnel; rights, benefits, tenure.] (4) Special education personnel transferred from 1 school district to another to implement the school code of 1955, as amended, shall be entitled to all rights, benefits, and tenure to which the person would otherwise be entitled had he been employed by the receiving district originally].

§ 15 of 1947 PA 336, as added by 1965 PA 379

423.215 Collective bargaining; duties of employer and employees' representative; subjects and limitations.

Sec. 15. A public employer shall bargain collectively with the representatives of its employees as defined in section 11 and is authorized to make and enter into collective bargaining agreements with such representatives. For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract, ordinance or resolution incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

HISTORY: Add. 1965, p. 748, Act 379, Imd. Eff. Jul. 23.

§ 46 of 1969 PA 306, as amended by 1971 PA 171

24.246 Promulgation; records. [M.S.A. 3.560(146)]

Sec. 46. (1) To promulgate a rule an agency shall file in the office of the secretary of state 3 copies of the rule bearing the required certificates of approval and adoption and true copies of the rule without the certificates. An agency shall not file a rule, except an emergency rule under section 48, until at least 10 days after the date of the certificate of approval by the joint committee on administrative rules or until at least 10 days after expiration of the applicable period of time prescribed in subsection (5) of section 45 when the legislature has not adopted a concurrent resolution disapproving the rule during that period. An agency shall transmit a copy of the rule bearing the required certificates of approval and adoption to the office of the governor at least 10 days before it files the rule.

(2) The secretary of state shall indorse the date and hour of filing of rules on the 3 copies of the filing bearing the certificates and shall maintain a file containing 1 copy for public inspection.

(3) The secretary of state, as often as he deems it advisable, shall cause to be arranged and bound in a substantial manner the rules hereafter filed in his office with their attached certificates and published in a supplement to the Michigan administrative code. He shall certify under his hand and seal of the state on the frontispiece of each volume that it contains all of the rules filed and published for a specified period. The rules, when so bound and certified, shall be kept in the office of the secretary of state and no further record thereof is required to be kept. The bound rules are subject to public inspection.